

Council/Agency Meeting Held: _____	City Clerk's Signature
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date: July 18, 2005	Department ID Number: AD 05-09

**CITY OF HUNTINGTON BEACH
REQUEST FOR CITY COUNCIL ACTION**

SUBMITTED TO: HONORABLE MAYOR CITY COUNCIL MEMBERS

SUBMITTED BY: Jill Hardy, Mayor, Chair on behalf of Intergovernmental Relations Committee
Members Councilmen Coerper and Bohr

PREPARED BY: Patricia Dapkus, Department Analyst, Sr. *PD*

SUBJECT: APPROVE A CITY COUNCIL POSITION ON LEGISLATION PENDING BEFORE THE FEDERAL, STATE, OR REGIONAL GOVERNMENTS AS RECOMMENDED BY THE CITY COUNCIL INTERGOVERNMENTAL RELATIONS COMMITTEE (IRC)

2005 JUL - 1 P 4:43
 HUNTINGTON BEACH, CA
 CITY OF HUNTINGTON BEACH
 CITY CLERK
JK
pd

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

Statement of Issue: Approve a City Council position as recommended by the City Council Intergovernmental Relations Committee on legislation pending before the Federal, State or Regional Governments or to be put on a ballot for approval by the voters, and authorize the Mayor to communicate the City of Huntington Beach's position to the elected members of the State or Federal Legislatures, Governmental Task Force, or regional body.

Funding Source: N/A

Recommended Action:

Motion:

1. **OPPOSE - HR 2726 (Sessions)** Preserving Innovation in Telecom Act of 2005 as Introduced
2. **SUPPORT - SB 1 (Murray)** Energy: Renewable Sources (the Million Solar Roofs Initiative) – as amended on 06/23/05
3. **OPPOSE - SB 399 (Escutia)** Health Services – 3rd Party Liability as amended on 06/21/05
4. **OPPOSE - SB 1059 (Escutia)** Electric Transmission Corridors – as amended on 05/27/05

Alternative Action(s):

Do not take action on one or more of the above recommendations and provide direction to staff.

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**CITY OF HUNTINGTON BEACH
REQUEST FOR ACTION**

MEETING DATE: July 18, 2005

DEPARTMENT ID NUMBER: AD 05-0

Analysis:

1. OPPOSE - HR 2726 (Sessions) Preserving Innovation in Telecom Act of 2005

This bill would prohibit municipal governments from offering any kind of telecommunications, Internet or cable service if any non-governmental organization offers a "reasonably comparable" service. It would outlaw any new community Internet projects within the same "geographic area" that private companies currently offer high-speed Internet access.

Community Internet could provide citizens everywhere with affordable, universal access to high-speed broadband services. New wireless and wired technologies allow local governments, schools, public-private partnerships, non-profits and community organizations to offer faster, cheaper and more reliable service than ever before. The largest telecom and cable companies are fighting these alternatives. As one example of this bill's potential impact, the City has had many requests for and could potentially offer wireless Internet service at the library. If approved, HR 2726 would preclude the city from providing this service.

The Intergovernmental Relations Committee is recommending that the city oppose HR 2726 as introduced.

2. SUPPORT - SB 1 (Murray) Energy: Renewable Sources (the Million Solar Roofs Initiative) – as amended on 06/23/05

This bill would establish the Million Solar Roofs Initiative, the goal of which is to place one million solar energy systems, or 3,000 megawatts, on new or existing residential and commercial buildings by 2018. This bill proposes to increase the number of Photo Voltaic systems in the state from about 12,000 to one million, or solar capacity from about 93 megawatts to 3,000 megawatts (about the equivalent of six small power plants) by increasing electricity rates and offering solar subsidies.

Solar panels such as those sponsored under SB 1 would be tied to the electric grid. This means that the excess power they produce will be available to the power companies. Additionally the power they produce is most abundant in the middle of the day when the demand for electricity is the greatest. Because of this, the energy produced by having these solar systems would substantially reduce the need for California to build additional power plants and peaker plants. The Intergovernmental Relations Committee is recommending that the City support SB 1.

3. OPPOSE - SB 399 (Escutia) Health Services – 3rd Party Liability as amended on 06/21/05

This bill restores a health care provider's right to assert a lien against any judgment, award or settlement received or to be received by a Medi-Cal beneficiary for services rendered in connection with injuries caused by a third party.

The League opposes SB 399 because they believe that it will result in increased liability to local governments even if they are not self-insured. They also believe by permitting a health care provider to recover expenses from a Medi-Cal beneficiary for injuries caused by a third party, SB 399 is a back door way to increase Medi-Cal funding and public hospital reimbursement rates. They are also concerned about the precedent that it would establish in terms of third party liability.

**CITY OF HUNTINGTON BEACH
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The Intergovernmental Relations Committee is recommending that the City oppose SB 399.

4. OPPOSE - SB 1059 (Escutia) Electric Transmission Corridors – as amended on 05/27/05

This bill would authorize the California Energy Commission to designate a transmission corridor zone (TCZ) on its own motion or by application of a person who plans to construct a high-voltage electric transmission line within the state.

SB 1059 would require a city or county, within 12 months after receiving a notice from the commission of a transmission corridor zone to amend its general plan to be consistent with the commission's designation or revision.

The League of California Cities is urging cities to oppose SB 1059 because it would preempt local land use authority by requiring local governments to amend their general plans to be consistent with the California Energy Commission's (CEC) designations of a TCZ. They are concerned that amendments to a city's general plan can be costly and time consuming. They are also concerned because it gives the Commission discretion as to what are and are not compatible land uses. Such discretion has historically rested with local officials who have a firsthand understanding of local land use trends and needs. Additionally, once a TCZ is designated by the Commission, the landowner's options as to the use of that property will be limited, and that designation could make local governments vulnerable to regulatory takings lawsuits.

The Intergovernmental Relations Committee is recommending the City oppose SB 1059.

Environmental Status: N/A

Attachment(s):

City Clerk's Page Number	No.	Description
4 9 31 48	1.	HR 2726 as introduced on May 26 with email from the Ferguson Group
	2.	SB 1 (Murray/Campbell) Million Solar Roofs with support information
	3.	SB 399 (Escutia) Health Services – 3 rd Party Liability with additional information
	4.	SB 1059 (Escutia/Murray) Electric Transmission Corridor Zones with the League of California Cities opposition memos.

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ATTACHMENT #1

HR 2726 IH

109th CONGRESS

1st Session

H. R. 2726

To prohibit municipal governments from offering telecommunications, information, or cable services except to remedy market failures by private enterprise to provide such services.

IN THE HOUSE OF REPRESENTATIVES

May 26, 2005

Mr. SESSIONS introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prohibit municipal governments from offering telecommunications, information, or cable services except to remedy market failures by private enterprise to provide such services.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Preserving Innovation in Telecom Act of 2005'.

SEC. 2. PROHIBITION ON MUNICIPAL SERVICES.

(a) Amendment- Section 253 of the Communications Act of 1934 (47 U.S.C. 253) is amended by adding at the end the following new subsection:

(g) Provision of Services by State and Local Governments and Their Affiliates-

(1) PROHIBITION- Effective 60 days after the date of enactment of the Preserving Innovation in Telecom Act of 2005, neither any State or local government, nor any entity affiliated with such a government, shall provide any telecommunications, telecommunications service, information service, or cable service in any geographic area within the jurisdiction of such government in which a corporation or other private entity that is not affiliated with any State or local government is offering a substantially similar service.

(2) GRANDFATHER PROVISION- Paragraph (1) shall not prohibit a State or local government or affiliated entity thereof from providing in any geographic area within the jurisdiction of such government any service that such government or entity was providing on the date of enactment of the Preserving Innovation in Telecom Act of 2005.'

(b) Conforming Amendment- Subsection (f) of section 621 of the Communications Act of 1934 (47 U.S.C. 541 (f)) is repealed.

END

F-1.5

Dapkus, Pat

From: Charmayne Macon [cmacon@tfgnet.com]
Sent: Thursday, June 16, 2005 7:59 AM
Subject: FW: Legislation Aims to Stop Municipal Wi-Fi

FYI

From: Ron Hamm
Sent: Thursday, June 16, 2005 10:52 AM
Subject: Legislation Aims to Stop Municipal Wi-Fi

I have attached a copy of H.R. 2726. The legislation, introduced by Rep Pete Sessions (R-TX) on May 26, 2005, to prohibit municipal governments from offering any kind of telecommunications, Internet or cable service if any non-governmental organization offers a "reasonably comparable" service (interestingly enough, the presence of a volunteer free net, under a strict reading of the bill, would prohibit a local government from providing any services. Simply put, H.R. 2726 would outlaw any new community Internet projects within the same "geographic area" that private companies currently offer high-speed Internet access. It is believed that as a result of their failure in many states, the telecom companies have convinced Rep Sessions, a former telecom executive with SBC Communications, to introduce an anti-municipal Internet bill at the federal level. He is not a member of the Energy and Commerce Committee, which has the jurisdiction for this bill. Community Internet could provide citizens everywhere with affordable, universal access to high-speed broadband services. New wireless and wired technologies allow local governments, schools, public-private partnerships, non-profits and community organizations to offer faster, cheaper and more reliable service than ever before. However, the largest telecom and cable companies are fighting these alternatives every step of the way. The bill was referred to the House Committee on Energy and Commerce on May 26 and has not yet been scheduled for consideration.

Ron

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Ron

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6/29/2005

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-----Original Message-----

From: Eilerman, Chris [mailto:Chris.Eilerman@cincinnati-oh.gov]
Sent: Monday, June 06, 2005 1:49 PM
To: Bill Hanka; Ron Hamm
Subject: FW: Legislation Aims to Stop Muni Wi-Fi

Bill, Ron,

Do you have any information about the bill Ralph references below? (HR 2726)

Chris Eilerman
Special Projects Coordinator
Office of the City Manager
City of Cincinnati, Ohio
513.352.5326

-----Original Message-----

From: Renneker, Ralph
Sent: Monday, June 06, 2005 1:32 PM
To: Eilerman, Chris
Subject: FW: Legislation Aims to Stop Muni Wi-Fi

Chris,

Can you secure a copy of this proposed legislation for me to read? I don't think the City of Cincinnati should be in the telephone business, including offering broadband, but I guess we should protect that right. If it appears this is pretty onerous, how do we get our feelings to our lobbyists, whoever they are?

Ralph

-----Original Message-----

From: Horton, Rodney [mailto:rhorton@sedgwick.gov]
Sent: Monday, June 06, 2005 11:56 AM
To: titf@pti.org
Cc: Vogt, Richard
Subject: Legislation Aims to Stop Muni Wi-Fi

U.S. Rep. Pete Sessions (R-Texas) wants to take state and local governments out of the broadband business. It's for their own good, the former Southwestern Bell executive said.

Under the terms of the Preserving Innovation in Telecom Act (H.R. 2726) introduced by Sessions, state and local governments would be prohibited from offering telecommunications, telecommunications services, information services or cable service in any geographic area in which a private entity

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is already offering a substantially similar service.

Governments already offering telecom services would be grandfathered under Sessions' legislation. The bill also provides that in markets where private entities fail to offer service, municipal governments would be permitted to build networks and offer service.

"Rather than investing in vital public works projects, some local and state governments are investing their limited funds into telecommunications projects and putting taxpayer dollars at risk," the five-term congressman from Dallas said in a statement. "By choosing to invest their limited resources in telecommunications infrastructures, municipal governments often duplicate services already provided by a private entity."

Gina Vaughn, Sessions' communications director, told internetnews.com in an e-mail response, "We believe ... that under normal circumstances private providers are the ones with resources at their disposal to make the upgrades that come with continually evolving technology."

She added, "Municipal governments, with the many public works demands they face, are not in an ideal situation to be pouring money into continued telecom infrastructure updates."

Over the last several years, numerous cities, most notably Philadelphia, have considered launching their own wireless networks in direct competition with local providers. Republicans in particular are opposed to cities competing with private enterprise.

Earlier this week, Florida Gov. Jeb Bush signed a law similar to Sessions' national proposal prohibiting Florida cities from offering broadband if competitive services already exist.

Pennsylvania pushed through laws in December restricting municipal-backed broadband services, with Philadelphia receiving an exemption from the new law. The city plans to sell its wireless broadband service to homes and businesses, while providing free access in public spaces.

"My goal in introducing this legislation is to discourage municipal governments from wasting taxpayer funds on building duplicative infrastructure, while at the same time encouraging private companies to offer continually innovating service in underserved areas by removing the specter of government competition," Sessions said.

Before winning election to Congress, Sessions spent more than 16 years at the Bell Labs in New Jersey, and served as a Southwestern Bell district manager for marketing in Dallas.

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ATTACHMENT #2

SB 1 Senate Bill - AMENDED

BILL NUMBER: SB 1 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY JUNE 23, 2005
AMENDED IN SENATE MAY 31, 2005
AMENDED IN SENATE MAY 16, 2005
AMENDED IN SENATE APRIL 25, 2005
AMENDED IN SENATE FEBRUARY 28, 2005

INTRODUCED BY Senators Murray and Campbell
(Coauthors: Senators Alquist, Chesbro, Ducheny, and Kehoe)
(Coauthors: Assembly Members Bermudez, Chan, ~~Huff~~,
Cohn, Huff, Koretz, Laird,
Meno, Lieber, Maze, ~~Pavley~~, Nation,
Pavley, Saldana, and Wolk)

DECEMBER 6, 2004

An act to amend Section 25744 of, to add Sections 25405.5 and 5405.6 to, and to add Chapter 8.8 (commencing with Section 25780) to Division 15 of, the Public Resources Code, and to amend Section 79.6 of, and to add Sections 379.8 and 387.5 to, the Public Utilities Code, relating to solar energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1, as amended, Murray. Energy: renewable energy resources: Million Solar Roofs Initiative.

(1) Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to expand and accelerate development of alternative sources of energy, including solar resources. Existing law requires the Energy Commission, until January 1, 2006, and to the extent that funds are appropriated for that purpose in the annual Budget Act, to implement a grant program to accomplish specified goals, including making solar energy systems most competitive with alternate forms of energy.

Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations. The existing Public Utilities Act requires the PUC to require Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison to identify a separate electrical rate component to fund programs that enhance system reliability and provide in-state benefits. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. The funds are collected to support cost-effective energy efficiency and conservation activities, public interest research and development not adequately provided by competitive and regulated markets, and renewable energy resources. Existing law requires that 17.5% of the money collected under the renewable energy public goods charge be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications. Existing law requires that the funds be expended in accordance with a specified report of the Energy Commission to the Legislature, subject to certain requirements.

Existing law requires the PUC, on or before March 7, 2001, and in consultation with the Independent System Operator, to take certain actions, including, in consultation with the Energy Commission, adopting energy conservation demand-side management and other initiatives in order to reduce demand for electricity and reduce load during peak demand periods, including differential incentives for renewable or superclean distributed generation resources. Pursuant

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> this requirement, the PUC has developed a self-generation incentive program to encourage customers of electrical corporations > install distributed generation that operates on renewable fuel or > contributes to system reliability. Existing law requires the PUC, in > consultation with the Energy Commission, to administer, until January > , 2008, a self-generation incentive program for distributed > generation resources in the same form that exists on January 1, 2004, > subject to certain air emissions and efficiency standards.

This bill would establish the Million Solar Roofs Initiative, administered by the Energy Commission, with the goals of placing 1,000,000 solar energy systems, as defined, on new and existing residential and commercial customer sites, or its generation capacity equivalent of 3,000 megawatts, establishing a self-sufficient solar industry in 10 years, and placing solar energy systems on 50% of new developments in 13 years. The bill would establish the Million Solar Roofs Initiative Trust Fund and would provide that, upon appropriation by the Legislature, moneys deposited into the fund may be expended by the Energy Commission for purposes of carrying out the Million Solar Roofs Initiative. The bill would provide that up to 2% of the money in the fund may be expended for the state's costs of administration. The program would require the Energy Commission to award incentives, pursuant to a declining schedule to be adopted by the Energy Commission, and would authorize certain other incentive programs, to support the installation of eligible solar energy systems. The bill would require the Energy Commission to establish and revise eligibility criteria for solar energy systems and to establish conditions for incentives. The bill would require that electrical work to install the solar energy system be performed under contract by a contractor meeting certain licensure requirements. The bill would require the Energy Commission to adopt guidelines governing the program at a publicly noticed meeting. The bill would provide that the Million Solar Roofs Initiative program supplants that portion of the program to foster the development of emerging renewable technologies that encourages installation of residential and commercial photovoltaic solar energy systems. The bill would require that, upon ~~implementation of~~ *disbursement of funds from the Million Solar Roofs Initiative Trust Fund consistent with the Million Solar Roofs Initiative, the photovoltaic portion of the emerging renewable technologies program be discontinued and the ~~funding for~~ remaining funds from that program be deposited into the Million Solar Roofs Initiative Trust Fund ~~at the same level as was collected in the 2004-05 fiscal year~~*, and would prohibit the Energy Commission from establishing any other program in addition to the Million Solar Roofs Initiative program, to encourage the increased installation of residential and commercial photovoltaic solar energy systems. The bill would require the Energy Commission to conduct random audits of solar energy systems to evaluate their operational performance. The bill would require the Energy Commission, on or before January 1, 2009, and every 3rd year hereafter, to submit an assessment of the success of the Million Solar Roofs Initiative program to the Legislature.

This bill would require that the PUC, on or before February 1, 2006, and in consultation with the Energy Commission, issue an order opening a proceeding, or expanding the scope of an existing proceeding, to finance a comprehensive solar energy program to adequately fund the Million Solar Roofs Initiative. The bill would require funding of the Million Solar Roofs Initiative to be an element of the program adopted by the PUC. The bill would require that the reasonable cost of the program be included in the distribution revenue requirements of electrical corporations. The bill would require that the program adopted by the PUC be a cost-effective investment by ratepayers in peak electricity generation capacity that enables ratepayers to recoup the cost of

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their investment through lower rates as a result of avoiding purchases of electricity at peak rates generated by traditional generation resources. The bill would require the PUC to adopt the program no later than January 1, 2007. The bill would provide that the Million Solar Roofs Initiative program supplants that portion of the self-generation incentive program that encourages installation of residential and commercial photovoltaic solar energy systems and would require that, upon ~~implementation of~~ ~~disbursement by the Energy Commission of funds from the Million Solar Roofs Initiative Trust Fund consistent with the Million Solar Roofs Initiative program~~ ~~by the Energy Commission~~ the photovoltaic portion of the self-generation incentive program be discontinued and the PUC order the ~~funding to~~ ~~remaining funds from that program~~ be deposited into the Million Solar Roofs Initiative Trust Fund ~~at the same level as was collected in the 2004-05 fiscal year~~. The bill would prohibit the PUC from establishing any other program to encourage the increased installation of residential and commercial solar energy systems.

This bill would require all local publicly owned electric utilities, as defined, that sell electricity at retail, on or before January 1, 2007, to adopt, implement, and finance a solar roofs initiative program, funded by a surcharge, as prescribed, for the purpose of investing in, and encouraging the increased installation of, residential and commercial solar energy systems. The bill would require a local publicly owned electric utility to make certain program information available to its customers and to the Energy Commission on an annual basis beginning June 1, 2007. By imposing additional duties upon local publicly owned electric utilities, the bill would thereby impose a state-mandated local program.

(2) Existing law requires all electric service providers, as defined, to develop a standard contract or tariff providing for net energy metering, and to make this contract available to eligible customer generators, upon request. Existing law requires all electric service providers, upon request, to make available to eligible customer generators contracts for net energy metering on a first-come-first-served basis until the time that the total rated generating capacity used by eligible customer generators exceeds 0.5% of the electric service provider's aggregate customer peak demand.

This bill would, notwithstanding these requirements, require the PUC to order electric service providers to expand the availability of net energy metering so that it is offered on a first-come-first-served basis until the time that the total rated generating capacity used by all eligible customer-generators exceeds % of the electric service provider's aggregate custom peak demand.

(3) Existing law requires the Energy Commission to expand and accelerate development of alternative sources of energy, including solar resources.

This bill would require that beginning January 1, 2010, a seller of production homes, as defined, offer the option of a solar energy system, as defined, to all customers negotiating to purchase a new production home constructed on land meeting certain criteria and to disclose certain information. The bill would require the Energy Commission to develop an offset program that allows a developer or seller of production homes to forego the offer requirement on one project, by installing solar energy systems generating specified amounts of electricity on other projects. The bill would require that not later than July 1, ~~2009~~ 2006, the Energy Commission initiate a public proceeding and make findings if and under what conditions solar energy systems are to be required on new residential and nonresidential buildings. The bill would prohibit the Energy Commission from requiring that a solar energy system be installed on a residential building unless the Energy

3.1 Senate Bill - AMENDED

Commission determines, based upon consideration of all costs associated with the system, including the availability of certain financial incentives, that the system is cost-effective when amortized over the economic life of the structure.

(4) Under existing law, a violation of the Public Utilities Act or order or direction of the PUC is a crime.

Various provisions of this bill are within the act and require action by the PUC to implement the bill's requirements. Because a violation of those provisions or of PUC actions to implement those provisions would be a crime, this bill would impose a state-mandated local program by creating new crimes.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 25405.5 is added to the Public Resources Code, to read:

25405.5.

(a) As used in this section, the following terms have the following meanings:

(1) "kW" means kilowatts or 1,000 watts, as measured from the terminating current side of the solar energy system inverter consistent with Section 223 of Title 15 of the United States Code.

(2) "Production home" means a single family residence constructed as part of a development of at least 50 homes per project that is intended or offered for sale.

(3) "Solar energy system" means a photovoltaic solar collector or other photovoltaic solar energy device that has a primary purpose of providing for the collection and distribution of solar energy for the generation of electricity, and that produces at least 1 kW, but not more than 1 megawatt, alternating current rated peak electricity.

(b) A seller of production homes shall offer a solar energy system option to all customers that enter into negotiations to purchase a new production home constructed on land for which an application for tentative subdivision map has been deemed complete on or after January 1, 2010, and disclose the following:

(1) The total installed cost of the solar energy system option.

(2) The estimated cost savings associated with the solar energy system option, as determined by the commission pursuant to Chapter 8 (commencing with Section 25780) of Division 15.

(c) The State Energy Resources Conservation and Development Commission shall develop an offset program that allows a developer or seller of production homes to forego the offer requirement of this section on one project, by installing solar energy systems generating specified amounts of electricity on other projects. The amount of electricity required to be generated from solar energy systems used as an offset pursuant to this subdivision, shall be equal to the amount of electricity generated by solar energy systems installed on a similarly sized project within that climate zone, assuming 20 percent of the prospective buyers would have installed solar energy systems.

SEC. 2. Section 25405.6 is added to the Public Resources Code, to read:

25405.6.

Not later than July 1, 2006, the commission shall initiate a

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public proceeding and make findings if , and under what conditions , solar energy systems shall be required on new residential and new nonresidential buildings, including the establishment of numerical targets. A solar energy system shall not be required for a residential building unless the commission determines, based upon consideration of all costs associated with the system, that the system is cost-effective when amortized over the economic life of the structure. When determining the cost-effectiveness of the solar energy system, the commission shall consider the availability of governmental rebates, tax deductions, net-metering, and other quantifiable factors, provided that the commission can determine the availability of these financial incentives if a solar energy system is made mandatory and not elective. The commission shall periodically update the standards and adopt any revision that the commission determines is necessary, including revisions that reflect changes in the financial incentives originally considered by the commission when determining cost-effectiveness of the solar energy system. For purposes of this section, ~~a solar energy system~~ "solar energy system" means a photovoltaic solar collector or other photovoltaic solar energy device that has a primary purpose of providing for the collection and distribution of solar energy for the generation of electricity.

SEC. 3. Section 25744 of the Public Resources Code is amended to read:

25744.

(a) Seventeen and one-half percent of the money collected pursuant to the renewable energy public goods charge shall be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications.

(b) Any funds used for emerging technologies pursuant to this section shall be expended, except as provided in subdivisions (c) and (d), in accordance with the report, subject to all of the following requirements:

(1) Funding for emerging technologies shall be provided through a competitive, market-based process that shall be in place for a period of not less than five years, and shall be structured so as to allow eligible emerging technology manufacturers and suppliers to anticipate and plan for increased sale and installation volumes over the life of the program.

(2) The program shall provide monetary rebates, buydowns, or equivalent incentives, subject to subparagraph (C), to purchasers, lessees, lessors, or sellers of eligible electricity generating systems. Incentives shall benefit the end-use consumer of renewable generation by directly and exclusively reducing the purchase or lease cost of the eligible system, or the cost of electricity produced by the eligible system. Incentives shall be issued on the basis of the rated electrical generating capacity of the system measured in watts, or the amount of electricity production of the system, measured in kilowatthours. Incentives shall be limited to a maximum percentage of the system price, as determined by the commission.

(3) Eligible distributed emerging technologies are photovoltaic, solar thermal electric, fuel cell technologies that utilize renewable fuels, and wind turbines of not more than 50 kilowatts rated electrical generating capacity per customer site, and other distributed renewable emerging technologies that meet the emerging technology eligibility criteria established by the commission. Eligible electricity generating systems are intended primarily to offset part or all of the consumer's own electricity demand, and shall not be owned by local publicly owned electric utilities, nor be located at a customer site that is not receiving distribution service from an electrical corporation that is subject to the renewable energy public goods charge and contributing funds to

B 1 Senate Bill - AMENDED

upport programs under this chapter. All eligible electricity generating system components shall be new and unused, shall not have been previously placed in service in any other location or for any other application, and shall have a warranty of not less than five years to protect against defects and undue degradation of electrical generation output. Systems and their fuel resources shall be located on the same premises of the end-use consumer where the consumer's own electricity demand is located, and all eligible electricity generating systems shall be connected to the utility grid in California. The commission may require eligible electricity generating systems to have meters in place to monitor and measure a system's performance and generation. Only systems that will be operated in compliance with applicable law and the rules of the Public Utilities Commission shall be eligible for funding.

(4) ~~The commission shall limit the amount that may limit the distribution of funds available for any system or project of multiple systems and reduce the level of funding for any system or project of multiple systems that has received, or may be eligible to receive, any government or utility funds, incentives, or credit, pursuant to the program based upon the receipt of funding or financial incentives from other federal or local government or public utility programs to promote solar energy.~~

(5) In awarding funding, the commission may provide preference to systems that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(6) In awarding funding, the commission shall develop and implement eligibility criteria and a system that provides preference to systems based upon system performance, taking into account factors, including, but not limited to, shading, insulation levels, and installation orientation.

(7) ~~At least once annually, the commission shall publish and make available to the public the balance of funds available for emerging renewable energy resources for rebates, paydowns, and other incentives for the purchase of these resources.~~

(c) Notwithstanding Section 399.6 of the Public Utilities Code, the commission may expend, until December 31, 2008, up to sixty million dollars (\$60,000,000) of the funding allocated to the Renewable Resources Trust Fund for the program established in this section, subject to the repayment requirements of subdivision (f) of section 25751.

(d) Notwithstanding Section 399.6 of the Public Utilities Code and subdivision (b), the Million Solar Roofs Initiative program shall implement that portion of the program to foster the development of emerging renewable technologies that ~~encourages~~ encourage the installation of residential and commercial photovoltaic solar energy systems. Upon ~~implementation of disbursement of funds from the Million Solar Roofs Initiative Trust Fund consistent with the Million Solar Roofs Initiative program established pursuant to Chapter 8.8 commencing with Section 25780),~~ the photovoltaic portion of the emerging renewable technologies program shall be discontinued and the ~~funding~~ remaining funds from that program shall be deposited into the Million Solar Roofs Initiative Trust Fund ~~at the same level as was collected in the 2004-05 fiscal year~~. The commission shall not establish any other program to encourage the increased installation of residential and commercial photovoltaic solar energy systems.

SEC. 4. Chapter 8.8 (commencing with Section 25780) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 8.8. Million Solar Roofs Initiative

25780.

F-1.15

The Legislature finds and declares all of the following:

- (a) California has a pressing need to procure a steady supply of affordable and reliable peak electricity.
- (b) Solar generated electricity is uniquely suited to California's needs because it produces electricity when California needs it most, during the peak demand hours in summer afternoons when the sun is brightest and air conditioners are running at capacity.
- (c) Procuring solar electric generation capacity to meet peak electricity demand increases system reliability and decreases California's dependence on unstable fossil fuel supplies.
- (d) Solar generated electricity diversifies California's energy portfolio. California currently relies on natural gas for the bulk of its electricity generation needs. Increasing energy demands place increasing pressure on limited natural gas supplies and threaten to raise costs.
- (e) More than 150,000 homes will be built annually in California in the coming years, challenging energy reliability and affordability.
- (f) Investing in residential and commercial solar electricity generation installations today will lower the cost of solar generated electricity for all Californians in the future. In 10 years, solar peak electric generation can be procured without the need for rebates.
- (g) Increasing California's solar electricity generation market will also bring additional manufacturing, installation, and sales jobs to the state at a higher rate than most conventional energy production sources.
- (h) Funding a Million Solar Roofs Initiative is a cost-effective investment by ratepayers in peak electricity generation capacity and ratepayers will recoup the cost of their investment through lower rates as a result of avoiding purchases of electricity at peak rates, with additional system reliability and pollution reduction benefits.
- (i) Solar energy systems provide substantial energy reliability and pollution reduction benefits. Solar energy systems also diversify our energy supply and thereby reduce our dependence on imported fossil fuels.

25781.

As used in this chapter, the following terms have the following meanings:

- (a) "kW" means kilowatts or 1,000 watts, as measured from the alternating current side of the solar energy system inverter consistent with Section 223 of Title 15 of the United States Code.
- (b) "kWh" means kilowatthours, as measured by the number of kilowatts generated in an hour.
- (c) "MW" means megawatts or 1,000,000 watts.
- (d) "Solar energy system" means a photovoltaic solar collector or other photovoltaic solar energy device that has a primary purpose of providing for the collection and distribution of solar electrical energy for the generation of electricity, and that produces at least kW alternating current rated peak electricity.
- (e) "Million Solar Roofs Initiative" means the program established by this chapter.

25782.

- (a) (1) The commission shall develop and implement a multiyear Million Solar Roofs Initiative to provide funding and support to foster the installation of solar energy systems on new and existing residential and commercial customer sites in California. The goals of this program are the placement of solar energy systems on 1,000,000 residential and commercial sites, or its generation capacity equivalent of 3,000 MW, the establishment of a self-sufficient solar industry in which solar energy systems are a viable mainstream option for both homes and businesses in 10 years, and the placement of solar energy systems on 50 percent of new homes in 13 years.

B 1 Senate Bill - AMENDED

(2) The Million Solar Roofs Initiative program shall supplant that portion of the program to foster the development of emerging renewable technologies funded pursuant to Section 25744, that encourages installation of residential and commercial photovoltaic solar energy systems. Upon ~~implementation of disbursement of funds from the Million Solar Roofs Initiative Trust Fund consistent with the Million Solar Roofs Initiative program, the photovoltaic portion of the emerging renewable technologies program shall be discontinued and the funding remaining funds from that program shall be deposited into the Million Solar Roofs Initiative Trust Fund at the same level as was collected in the 2004-05 fiscal year~~

(3) The commission shall not establish any other program in addition to the program established pursuant to this chapter, to encourage the increased installation of residential and commercial photovoltaic solar energy systems.

(b) All funds used for the Million Solar Roofs Initiative shall be expended in accordance with the following:

(1) The commission shall award monetary incentives for eligible solar energy systems not to exceed the existing level of incentive in effect on January 1, 2006. The incentive level shall decline each year thereafter at a rate of no less than 7 percent per year and shall be zero as of December 31, 2016. The commission shall adopt and publish a schedule of declining incentive levels no less than 60 days in advance of the first decline in incentive levels. The commission may develop incentives based upon the output of electricity from the system, provided those incentives are consistent with the declining incentive levels of this paragraph.

(2) On or before January 1, 2007, the commission shall adopt revisions to the eligibility criteria for solar energy systems, including design, installation, and electricity output standards or incentives.

(3) Notwithstanding paragraph (1), the commission may increase the incentive level by not more than 50 percent above the maximum incentive level established pursuant to paragraph (1) for solar energy systems that are installed on "zero energy homes" or "zero energy commercial structures." Prior to an increase in the incentive level, the commission shall adopt definitions for "zero energy homes" and "zero energy commercial structures" through a public process, including at least one public hearing with not less than 30 days' notice.

(4) Notwithstanding paragraph (1), the commission may increase the incentive level by not more than 25 percent above the maximum incentive level established pursuant to paragraph (1) for solar energy systems that are installed on homes or commercial structures that exceed the commission's established building standards by a specified percentage as determined by the commission.

(5) Awards shall be made for the installation of eligible solar energy systems on new or existing residential and commercial customer sites that are or will be receiving electrical distribution service from an electrical corporation that is contributing funds to support the Million Solar Roofs Initiative pursuant to Section 379.8 of the Public Utilities Code.

(6) Awards shall not be made for eligible solar energy systems installed on the premises of individuals or entities that are not contributing funds to support the Million Solar Roofs Initiative.

(c) The commission shall establish eligibility criteria for solar energy systems, including the following:

(1) The solar energy system is intended primarily to offset part or all of the consumer's own electricity demand.

(2) All components in the solar energy system are new and unused, and have not previously been placed in service in any other location or for any other application.

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(3) The solar energy system has a warranty of not less than 10 years to protect against defects and undue degradation of electrical generation output.

(4) The solar energy system is located on the same premises of the end-use consumer where the consumer's own electricity demand is located.

(5) The solar energy system is connected to the electrical corporation's electrical distribution system within the state.

(6) The solar energy system has meters or other devices in place to monitor and measure the system's performance and the quantity of electricity generated by the system.

(7) The electrical work to install the solar energy system is performed under contract by a California contractor with an active C-10 license, in accordance with rules and regulations adopted by the Contractors' State License Board.

(8) The solar energy system is installed in conformance with the manufacturer's specifications and in compliance with all applicable electrical and building code standards.

(d) The commission shall establish conditions on incentives that require or encourage all of the following:

(1) Appropriate siting and high quality installation of the solar energy system by developing installation guidelines that maximize the performance of the system and prevent qualified systems from being inefficiently or inappropriately installed. *The conditions established by the commission shall not impact housing designs or densities presently authorized by a city, county, or city and county.* The goal of this paragraph is to achieve efficient installation of solar energy systems to promote the greatest energy production per ratepayer dollar.

(2) Optimal solar energy system performance during periods of peak electricity demand, including the use of advanced metering systems, onsite performance meters, dispatchable battery backup systems, and performance based incentives.

(3) Appropriate energy efficiency improvements in the new or existing home or commercial structure where the solar energy system is installed.

(4) Rate equipment, components, and systems to assure reasonable performance and to develop standards that provide for compliance with the minimum ratings.

(e) The commission may limit the ~~amount~~ distribution of funds available ~~for any system or project of multiple systems and reduce the level of funding for any system or project of multiple systems that has received, or may be eligible to receive, any other government or utility funding, incentive, or credit, except for any income or property tax credit or exemption~~ to the program based upon the receipt of funding or financial incentives from other federal or local government or public utility programs to promote solar energy.

(f) Notwithstanding subdivision (e), the commission shall provide proportional program support, not to exceed 10 percent of the overall funds for the Million Solar Roofs Initiative, for installation of solar energy systems on affordable housing projects undertaken pursuant to Section 50052.5, 50053, or 50199.14 of the Health and Safety Code. If deemed appropriate in consultation with the California Tax Credit Allocation Committee, the commission may establish a revolving loan or loan guarantee program for affordable housing projects consistent with the requirements of Chapter 5.3 (commencing with Section 25425).

(g) Pursuant to this chapter, the commission may provide incentives in the form of a monetary incentive or its equivalent to purchasers, lessees, lessors, or sellers of an eligible solar energy system. The incentive shall benefit the end-use consumer by directly and exclusively reducing the purchase or lease cost of the eligible solar energy system, or the cost of electricity produced by the

ligible solar energy system. Incentives shall be issued on the basis of the rated electrical capacity of the system measured in watts, or on the electricity production of the system, measured in kWh, as determined by the commission.

25783.

In administering the Million Solar Roofs Initiative, the commission shall do all the following:

(a) Examine and implement, to the extent appropriate, financing options that could lower solar energy system financing costs to residential and commercial customers. The commission shall examine wholesale and retail mortgage markets, and other issues that it deems appropriate.

(b) Acquire, if the commission determines it necessary, appropriate technical and administrative services or expertise to support the Million Solar Roofs Initiative. The commission may award contracts to develop or administer all or a portion of the Million Solar Roofs Initiative.

(c) Publish educational materials designed to demonstrate how builders may incorporate solar energy systems during construction as well as energy efficiency measures that best complement solar energy systems.

(d) Develop and publish the estimated annual electrical generation and savings for solar energy systems. The estimates shall vary by climate zone, type of system, size, lifecycle costs, electricity prices, and other factors the commission determines to be relevant to the consumer when making a purchasing decision.

(e) Provide assistance to builders and contractors in support of the Million Solar Roofs Initiative. The assistance may include technical workshops, training, educational materials, and related research.

(f) Publish, and make available to the public, at least once ~~annually~~ quarterly, the balance of funds available in the Million Solar Roofs Initiative Trust Fund, the cost of the program, the photovoltaic generating capacity installed, and the percentage of new and existing residential and commercial customer sites that are equipped with solar energy systems funded by the Million Solar Roofs Initiative. This information shall be included in the report to the Legislature made pursuant to subdivision (i).

(g) The commission shall annually conduct random audits of solar energy systems to evaluate their operational performance.

(h) The commission, in consultation with the Public Utilities Commission, shall evaluate the costs and benefits of having an increased number of operational solar energy systems as a part of the electrical system with respect to their impact upon the distribution, transmission, and supply of electricity, using the best available load profiling and distribution operations data from the Public Utilities Commission, local publicly owned electric utilities, and electrical corporations, and performance audits of installed solar energy systems.

(i) On or before January 1, 2009, and every third year thereafter, the commission shall submit to the Legislature an assessment of the success of the Million Solar Roofs Initiative program. That assessment shall include the number of residential and commercial sites that have installed solar energy systems, the electrical generating capacity of the installed solar energy systems, the cost of the program, total electrical system benefits, including the effect on electrical service rates, environmental benefits, how the program affects the operation and reliability of the electrical grid, how the program has affected peak demand for electricity, the progress made toward reaching the goals of the program, whether the program is on schedule to meet the program goals, and recommendations for improving the program to meet its goals.

25784.

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(a) The commission shall adopt guidelines governing the Million Solar Roofs Initiative authorized under this chapter, at a publicly noticed meeting offering all interested parties an opportunity to comment. Not less than 30 days' public notice shall be given of the meeting required by this section, before the commission initially adopts guidelines. Substantive changes to the guidelines shall not be adopted without at least 10 days' written notice to the public. Notwithstanding any other provision of law, any guidelines adopted pursuant to this chapter shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Funds to further the purposes of this chapter may be committed for multiple years.

25785.

(a) The Million Solar Roofs Initiative Trust Fund is hereby created in the State Treasury.

(b) The money in the fund may be expended to implement and support the Million Solar Roofs Initiative pursuant to this chapter upon appropriation by the Legislature in the annual Budget Act. Up to 2 percent of the money in the fund may be expended for the costs of the state's administration of this chapter, upon appropriation by the legislature.

(c) Revenues collected by electrical corporations pursuant to Section 379.8 of the Public Utilities Code shall be transmitted to the commission at least quarterly for deposit in the Million Solar Roofs Initiative Trust Fund. The Treasurer shall immediately deposit money received pursuant to this section into the Million Solar Roofs Initiative Trust Fund for the current calendar year.

(d) Upon appropriation by the Legislature and notification by the commission, the Controller shall pay all awards of the money in the fund for purposes enumerated in this chapter. The eligibility of an award shall be determined solely by the commission based on the procedures it adopts under this chapter. Based on the eligibility of an award, the commission shall also establish the need for a multiyear commitment to any particular award and so advise the Department of Finance. An eligible award submitted by the commission to the Controller shall be accompanied by a summary description of how payment of the award furthers the purposes enumerated in this chapter, and an accounting of future costs associated with any award or group of awards known to the commission to represent a portion of a multiyear funding commitment.

SEC. 5. Section 379.6 of the Public Utilities Code is amended to read:

379.6.

(a) The commission, in consultation with the State Energy Resources Conservation and Development Commission, shall administer, until January 1, 2008, the self-generation incentive program for distributed generation resources originally established pursuant to Chapter 329 of the Statutes of 2000. Except as provided in subdivisions (b) and (c), the program shall be administered in the same form as it existed on January 1, 2004.

(b) Eligibility for the self-generation incentive program's level incentive category shall be subject to the following conditions:

(1) Commencing January 1, 2005, all combustion-operated distributed generation projects using fossil fuel shall meet an oxides of nitrogen (NOx) emissions rate standard of 0.14 pounds per megawatthour.

(2) Commencing January 1, 2007, all combustion-operated distributed generation projects using fossil fuel shall meet a NOx emissions rate standard of 0.07 pounds per megawatthour and a minimum efficiency of 60 percent. A minimum efficiency of 60 percent shall be measured as useful energy output divided by fuel input. The efficiency determination shall be based on 100 percent load.

(3) Combined heat and power units that meet the 60 percent efficiency standard may take a credit to meet the applicable NOx emissions standard of 0.14 pounds per megawatthour or 0.07 pounds per megawatthour. Credit shall be at the rate of one megawatthour for each 3.4 million British thermal units (Btus) of heat recovered.

(4) Notwithstanding paragraphs (1) and (2), a project that does not meet the applicable NOx emission standard is eligible if it meets both of the following requirements:

(A) The project operates solely on waste gas. The commission shall require a customer that applies for an incentive pursuant to this paragraph to provide an affidavit or other form of proof, that specifies that the project shall be operated solely on waste gas. Incentives awarded pursuant to this paragraph shall be subject to refund and shall be refunded by the recipient to the extent the project does not operate on waste gas. As used in this paragraph, "waste gas" means natural gas that is generated as a byproduct of petroleum production operations and is not eligible for delivery to the utility pipeline system.

(B) The air quality management district or air pollution control district, in issuing a permit to operate the project, determines that operation of the project will produce an onsite net air emissions benefit, compared to permitted onsite emissions if the project does not operate. The commission shall require the customer to secure the permit prior to receiving incentives.

(c) In administering the self-generation incentive program, the commission may adjust the amount of rebates, include other ultraclean and low-emission distributed generation technologies, as defined in Section 353.2, and evaluate other public policy interests, including, but not limited to, ratepayers, and energy efficiency and environmental interests. The Million Solar Roofs Initiative program shall supplant that portion of the self-generation incentive program that encourages installation of residential and commercial photovoltaic solar energy systems. Upon ~~implementation of disbursement by the State Energy Resources Conservation and Development Commission of funds from the Million Solar Roofs Initiative Trust Fund consistent with the Million Solar Roofs Initiative program by the State Energy Resources Conservation and Development Commission~~ established pursuant to Chapter 8.8 (commencing with Section 5780) of Division 15 of the Public Resources Code, the photovoltaic portion of the self-generation incentive program shall be discontinued and the commission shall order the ~~funding remaining funds from that program to be deposited into the Million Solar Roofs Initiative Trust Fund, at the same level as was collected in the 2004-05 fiscal year, as a part of the proceeding to adopt, implement, and finance a comprehensive solar energy program pursuant to Section 379.8.~~ Fund. The commission shall not establish any other program to encourage the increased installation of residential and commercial solar energy systems.

SEC. 6. Section 379.8 is added to the Public Utilities Code, to read:

379.8.

(a) As used in this section, the following terms have the following meanings:

(1) "kW" means kilowatts or 1,000 watts, as measured from the alternating current side of the solar energy system inverter consistent with Section 223 of Title 15 of the United States Code.

(2) "kWh" means kilowatthours, as measured by the number of kilowatts generated in an hour.

(3) "MW" means megawatts or 1,000,000 watts.

(4) "Solar energy system" means a photovoltaic solar collector or other photovoltaic solar energy device that has a primary purpose of providing for the collection and distribution of solar electrical

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energy for the generation of electricity, and that produces at least 1 kW alternating current rated peak electricity.

(b) Notwithstanding any other law, on or before February 1, 2006, the commission, in consultation with the State Energy Resources Conservation and Development Commission, shall initiate a new proceeding or expand the scope of an existing proceeding to finance a comprehensive solar energy program pursuant to Chapter 8.8 (commencing with Section 25780) of Division 15 of the Public Resources Code, to adequately fund the Million Solar Roofs Initiative.

(c) The commission's proceeding shall do all of the following:

(1) Order that funding for the photovoltaic portion of the self-generation incentive program for distributed generation be deposited into the Million Solar Roofs Initiative Trust Fund, at the same level as was collected in the 2004-05 fiscal year.

(2) Determine the level of additional funding needed to adequately support the goal of placing solar energy systems on one million residential and commercial customer sites or its equivalent of 3,000 MW solar generating capacity in the state by December 31, 2018.

(3) Encourage participation by a broad and diverse range of interests from all areas of the state, and interested state entities.

(d) The commission shall include the reasonable cost of the program in the distribution revenue requirements of electrical corporations.

(e) Notwithstanding any other provision of law, any charge imposed to fund the program adopted and implemented pursuant to this section shall be imposed upon all customers not participating in the California Alternate Rates for Energy or CARE program as provided ~~on~~ in paragraph (2), including those residential customers subject to the rate cap required by Section 30110 of the Water Code for existing baseline quantities or usage up to 130 percent of existing baseline quantities of electricity.

The costs of the program adopted and implemented pursuant to this section may not be recovered from customers participating in the California Alternate Rates for Energy or CARE program established pursuant to Section 739.1, except to the extent that program costs are recovered out of the nonbypassable system benefits charge authorized pursuant to Section 399.8.

(f) The commission shall adopt the program no later than January 1, 2007.

(g) The program adopted by the commission pursuant to this section, shall do all of the following:

(1) Be a cost-effective investment by ratepayers in peak electricity generation capacity that enables ratepayers to recoup the cost of their investment through lower rates as a result of avoiding purchases of electricity at peak rates generated by traditional powerplants and peaker generation units, with additional system reliability and pollution reduction benefits.

(2) Utilize the most cost-effective administrative mechanism to adequately accomplish the goals of the program.

(3) Provide a predictable long-term funding mechanism sufficient to encourage adequate investment by the solar industry.

(4) Make time-variant pricing available for all ratepayers with a solar energy system, upon adoption of time-variant pricing tariffs pursuant to Section 760. The commission shall structure any time-variant pricing so that ratepayers receive due value for their contribution to the purchase of solar energy systems and customers with solar energy systems continue to have an incentive to use electricity efficiently.

(5) Require San Diego Gas and Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company to each designate at least one employee to be accountable for solar energy system installations and operations.

(6) Require San Diego Gas and Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company to each monitor and report key solar program performance and progress data to the commission in a clearly identified place on the utility's internet Web site.

(7) Consider energy efficiency and demand side management options, in addition to solar energy system procurement, for new residential and commercial construction.

(8) Notwithstanding Section 2827, require an electric service provider to expand the availability of net energy metering so that it is offered on a first-come-first-served basis until the time that the total rated generating capacity used by all eligible customer-generators exceeds 5 percent of the electric service provider's aggregate customer peak demand. However, the net metering cap shall not exceed 2 percent until the commission has established an appropriate net metering time-variant rate design that considers the costs to all net metering participants and ratepayers as a whole and that considers the recovery of the fixed costs of providing distribution service to customers. The commission shall monitor the level of net energy metering for each electrical corporation to ensure that the cap is increased in a timely manner as needed to further the objectives of this section.

(h) The program adopted by the commission pursuant to this section shall also include elements for the purpose of funding a Million Solar Roofs Initiative by the State Energy Resources Conservation and Development Commission pursuant to Chapter 8.8 (commencing with Section 25780) of Division 15 of the Public Resources Code. These program elements shall exclude customers participating in the State Energy Resources Conservation and Development Commission's Million Solar Roofs Initiative from the rate cap for residential customers or existing baseline quantities or usage by those customers of up to 30 percent of existing baseline quantities, as required by Section 0110 of the Water Code.

(i) Upon ~~implementation of~~ disbursement by the State Energy Resources Conservation and Development Commission of funds from the Million Solar Roofs Trust Fund consistent with the Million Solar Roofs Initiative program ~~by the State Energy Resources Conservation and Development Commission~~ established pursuant to Chapter 8.8 (commencing with Section 25780) of Division 15 of the Public Resources Code, the photovoltaic portion of the self-generation incentive program shall be discontinued and the commission shall order the remaining funds from that program to be deposited into the Million Solar Roofs Initiative Trust Fund. The commission shall not establish any other program to encourage the increased installation of residential and commercial photovoltaic solar energy systems.

SEC. 7. Section 387.5 is added to the Public Utilities Code, to read:

387.5.

(a) The governing body of a local publicly owned electric utility, as defined in subdivision (d) of Section 9604, that sells electricity at retail, shall adopt, implement, and finance a solar roofs initiative program, funded by a surcharge in accordance with subdivision (b), for the purpose of investing in, and encouraging the increased installation of, residential and commercial solar energy systems. This program shall be consistent with the intent and goals of the Legislature to encourage the installation of 3,000 megawatts of photovoltaic solar energy in California in accordance with the Million Solar Roofs Initiative program (Chapter 8.8 (commencing with Section 25780) of Division 15 of the Public Resources Code).

(b) On or before January 1, 2007, a local publicly owned electric utility shall establish a new surcharge sufficient to offer monetary incentives for the installation of solar energy systems of at least two dollars and forty cents (\$2.40) per installed watt of

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photovoltaic solar energy. The incentive level shall decline each year thereafter at a rate of no less than 7 percent per year.

(c) A local publicly owned electric utility shall establish the program on or before January 1, 2007. Before establishing the program, the governing body of the local publicly owned utility shall give notice of, and hold, a public hearing to seek comment on the program from the community.

(d) A local publicly owned electric utility shall, on an annual basis beginning June 1, 2007, make available to its customers and to the State Energy Resources Conservation and Development Commission, information relating to the utility's solar roofs initiative program established pursuant to this section, including, but not limited to, the number of photovoltaic solar watts installed, the total number of photovoltaic systems installed, the total number of applicants, the amount of incentives awarded, and the contribution toward the program goals.

SEC. 8.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 9.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain other costs that may be incurred by a local agency or school district because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 7556 of the Government Code.

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Build It With Solar

What is the status of California's Solar Roofs legislation?

Passing its first major milestone, the Million Solar Roofs Bill, SB 1, co-authored by Senators Kevin Murray (D-Los Angeles) and John Campbell (R-Orange County) and endorsed by Governor Schwarzenegger cleared the California State Senate today by a vote of 30 to 5.

Who support's the Million Solar Roofs bill in the state legislature?

The Million Solar Roofs bill, SB 1, was introduced by Senator Kevin Murray (D-Los Angeles) and Senator John Campbell (R-Orange County).

Supporting Senate co-authors are (as of 5/9/05): Elaine Alquist (D-Santa Clara), Wesley Chesboro (D-Arcata), Denise Ducheny (D-San Diego), and Christine Kehoe (D-San Diego).

Supporting Assembly co-authors are (as off 5/9/05): Rudy Bermúdez, (D- LA/Orange County), Wilma Chan (D-Oakland), Rebecca Cohn (D-Santa Clara), Bob Huff, (R-Chino Hills), John Laird, (D- Santa Cruz), Mark Leno, (D-San Francisco), Sally Lieber (D-San Jose/Mountain View), Bill Maze (R-Visalia), Joe Nation (D-Marin), Fran Pavley, (D-Agoura Hills), and Lori Saldaña (D-San Diego), Lois Wolk (D-Davis).

SB 1 is officially sponsored by Governor Arnold Schwarzenegger.

In addition, the Million Solar Roofs bill, SB 1, is also endorsed by more than seven California cities and 200 groups and businesses.

What Does SB 1 Do?

SB 1 combines the incentives and standards needed to achieve Governor Schwarzenegger's goal of building half of all new homes with solar power and a million solar roofs by 2017.

Specifically, SB 1 would:

- Require all builders of large single-family home developments offer solar power as an option for homebuyers. This would give homebuyers the opportunity to save money by incorporating the solar system during construction;
- Provide homeowners and businesses a new, stable and secure rebate fund of \$100 million per year to reduce the upfront cost of solar power systems over the next ten years;
- Mandates that solar rebates decline by 7% each year to help ensure a mature, self-sufficient solar market by 2015;
- Mandate that utilities buy back excess electricity generated by solar systems up to 5% of peak demand, helping make the investment cost-effective for homeowners and businesses;
- Encourage greater energy efficiency in new homes and provide additional support for incorporating solar into affordable housing.

How Much Solar Power Would Be Installed Each Year as a Result?

The goal of SB 1 is to build half of all new homes with solar and to install a million solar roofs by 2017. Together, these two goals would bring 3,000 megawatts of solar energy over the next 10-15 years. This is enough to provide all the peak-energy needs of approximately 750,000 homes or for a city the size of San Francisco. California currently has just 75 MW of solar power installed statewide.

Making Solar PV More Affordable Much of the concern about solar is its upfront costs. SB 1 would address this barrier in several ways:

- Given California's growing home construction industry, giving homebuyers the option to incorporate solar into the construction of a new home can significantly cut the cost of the solar

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system while increasing California's solar market. Studies have shown that for every doubling of production the cost of manufacturing solar declines 18%.¹

- By creating a stable source of funding over the next ten years, SB 1 would give the solar industry, as well as those interested in installing, the kind of certainty needed to grow California's solar market.

- In addition, by mandating that the solar rebate decline by at least 7 percent each year, SB 1 helps ensure that solar power becomes a mature, self-sufficient industry over the coming decade.

- By mandating that utility companies purchase the excess electricity generated by a solar power system up to 5% of peak demand, SB 1 helps to make the initial investment cost-effective for homeowners and businesses.

How Does SB 1 Relate to Governor Schwarzenegger's Million Solar Roofs Initiative?

Governor Schwarzenegger has set the goal of building half of all new homes with solar power and installing a million solar systems across California over the next ten years. While the governor has yet to detail his support of the policies needed to achieve these goals, SB 1 represents a policy that the governor, the building industry and the environmental community all supported at the end of the 2004 legislative session.

What Are the Economic Benefits of SB 1?

- **SB 1 will save ratepayers \$2-5 billion** by providing a one-time rebate to homeowners and businesses to install solar energy systems and jumpstarting a promising renewable energy market in California. Rebate funds would be more than matched by private dollars, ratepayers essentially are investing in privately funded and pollution free power plants. By installing a million solar systems over the next ten years, ratepayers will displace the need to build more than thirty five peaking power plants (75 MW), each costing approximately \$30 million to build and many times that to supply with natural gas. When all the benefits of solar energy are taken into account, studies have shown that for every \$1 invested by the ratepayer in solar more than \$2-5 is saved over the thirty year life of the solar system.

- **SB 1 will bring more than 15,000 jobs to California.** Environment California's research shows that for every MW of solar installed, seven times more jobs are created compared to constructing new natural gas power plants. This means that building more than a million solar roofs by 2017 will bring more than 15,000 construction and maintenance jobs (measured in person-years). The difference between solar and natural gas power plants is that the bulk of the money ratepayers spend on electricity from natural gas plants goes into purchasing the fuel-80 percent of which is imported into California. The fuel for solar energy systems, in contrast, is free and 100 percent Californian.

- **Solar Homes Will Strengthen the Energy Grid and Help Prevent Price Spikes** California energy shortage problems occur mainly on hot summer afternoons when air conditioners are running full force. This is the time of day when malevolent energy companies, exemplified by Enron's illegal actions during the California Energy Crisis, take advantage of the economic laws of supply and demand. Appropriately, solar power works best during these peak demand periods helping to reduce demand during the critical afternoon hours when air conditioners are operating full-blast throughout the state. By increasing the number of solar homes, ratepayers will benefit from more diversified energy resources that will ease demands on limited fossil fuels helping to prevent future price spikes and market manipulation.

What are the Air Pollution Benefits of SB 1?

- Reduce Thousands of Tons of Air Pollution Each Year

California's persistent smog problems occur mainly in the summer months when pollutants, such as those emitted by fossil fuel power plants, combine with sunlight to form ozone smog. Reducing California's energy demand during the "ozone season" is helpful in reducing California's persistent smog problems.

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For every MW of solar installed, more than 300 pounds of smog-forming pollution (NOx) is reduced each year [3]. This is the equivalent to removing 17 cars from the road each year. In addition, for every MW of solar installed, more than 870,000 pounds of global warming pollution (CO2) is reduced each year [4]. This is the equivalent of removing more than 70 cars from the road each year [5].

This means that should California install 3,000 MW of solar by 2017, as called for in SB 1, more than 1,000,000 tons of air pollution will be reduced the equivalent to 200,000 cars removed from the roads each year.

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More than 200 Groups and Businesses Support SB 1 (as of 5/16/05)

VIP's

Assemblymember Bill Maze
Assemblymember Bob Huff
Assemblymember Fran Pavley
Assemblymember Joe Nation
Assemblymember John Laird
Assemblymember Lois Wolk
Assemblymember Lori Saldaña
Assemblymember Mark Leno
Assemblymember Rudy Bermúdez
Assemblymember Sally Lieber
Assemblymember Wilma Chan
California Energy Commission
Fresno City Councilman Henry T. Perea
California Attorney General Bill Lockyer
California Public Utilities Commission
Governor Arnold Schwarzenegger
Irvine City Council
Irvine Mayor Beth Krom
Los Angeles Times
Oakland Mayor Jerry Brown
Palo Alto Mayor Jim Burch
Riverside Press Enterprise
Rohnert Park City Council
Sacramento Bee
Sacramento Mayor Heather Fargo
San Francisco Board of Supervisors
San Francisco Mayor Gavin Newsom
San Jose Mayor Gonzales
San Jose Mercury News
Santa Cruz City Council
Santa Rosa City Council
Sebastopol City Council
Senator Christine Kehoe
Senator Denise Ducheny
Senator Elaine Alquist
Senator Wesley Chesboro

(State and National Groups in Bold)

A Solar Company, Inc,
Access Capital Management, Inc., Corte
Madera, CA
Acterra: Action for a Sustainable Earth, Palo
Alto
Admiral Tutoring and Travel, Pacific
Palisades
Aiko and Co., Santa Rosa
Akasha's Visionary Cuisine, LA
Akeena Solar

Alliance for Nuclear Responsibility
American Lung Assoc of CA
Americans for Solar Power
American Solar Energy Society
APRIA Healthcare
Al's Records and Tapes, LA
Alternative Power systems, Grass Valley
Ancient Art Surfboards, LA
Ancient Trees.net, Carmel
Andreasen and Assoc., San Diego
Antiquities School Pictures of America, San
Diego
Apartment Rentals, Oakland
Applied Solar Energy, Monterey
Artmuse Records, San Leandro
Assessco, Inc, Woodland Hills
Atira, Inc., San Diego

BD Music, Twain Harte
Better World Group
Bluewater Network
Baker-French Properties, Arcata
Blaskovich Services, Aptos
Borrego Solar Systems, Berkeley
BTL Construction, Aptos

California Alliance for Consumer Protection
California Building Officials
California Communities Against Toxics
CA Interfaith Power & Light
CA League of Conservation Voters
**California Republicans for Environmental
Protection**
**California Solar Energy Industry
Association (CALSEIA)**
CALPIRG
Clarum Homes
Clean Power Campaign
Coalition for Clean Air
Community Environment Council
California Baby, Los Angeles
California Green Party
California Solar Electric, Ojai
California Studies Student Assoc. SFSU,
San Francisco
Californians for Alternatives to Toxics,
Eureka
Carlin's Gardens, Landscaping, SF
Cervine Construction Co, Santa Cruz
Chastain Research Group, Inc., Palo Alto
Cienaga Services, Inc., Pismo Beach
Comic Press News, Sacramento
Community Links, San Jose

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Commuter Bicycles, Santa Barbara
CrossLine Solutions, San Rafael

Dancesance, Inc, Santa Monica
Davies Family Farm, SLO
Declination, San Francisco
Diamond Medical-Legal Consulting, Santa Rosa
dMb Enterprises

East Bay Municipal Utility District
EbenBrooks.com, San Diego
EcoEnergies, Sunnyvale
Education for Sustainable Living, LA
Electric Lodge, Venice
Encore Ceramics, Grants Pass
Energy Balance for Life, Solana Beach
Energy Innovations, Pasadena
ENJO California LLC, Los Angeles
Environmental Health Network, San Rafael
Environment California
Epic Photojournalism, Encinitas
Eremico Biological Services, Weldon

Field Fitness, Los Angeles
Fit4Free, Los Angeles
Foamex Asia, Vista
Fog Horn Realty, San Francisco
Forest Knolls, Nevada City
Fresno Greens
Full Solar, Boulder Creek

Global Green USA
Golden Valley Health Centers
GPD Vacuum Forming, Wildomar
Grafikedge, Los Angeles
Gray Panthers California
GrayPanthers of South Bay
Green Dragon Solar, Antelope
Green Energy Network, Fresno
Green Mountain Engineering, San Francisco
Greenpeace USA

Harmony Builders, Berkeley
Harmony Enterprises, Santa Clara
Havens Photography, Los Angeles
Health Advocacy in the Public Interest,
Santa Barbara
Healthy House Within a MATCH Coalition,
Merced
High Sun Engineering, Guerneville
Honey Girls Brewery, Janesville
Hope4Kids2USA, Sacramento
Humanity's Team, Studio City

Import Tile Co, Inc, Berkeley
Independent Energy Systems, Santa Cruz
Indian Voices Community Newspaper, San Diego
Intex Solutions, Montebello
Intri-Plex Technologies, Goleta
Intuvision, Cardiff by the Sea
IOTA Technology, Inc, Palo Alto

Juice Design, San Francisco

Kamden's Constructor Services, Inc.,
Sacramento
Kaos Entertainment, Santa Monica
Karafilis Investments, Del Mar
Kineo Design Group, Berkeley
Kovac Architects, Inc., Los Angeles
Kruger Foods, Inc., Murphys
Kyocera

Lake Murray Optometric, San Diego
Las Virgenes Homeowners Federation, LA
Laurel Village Neighborhood Assoc,
Oakland
Law Office of Bobby Kouretchian, Encinitas
Law offices of Matthew Miller, Solana Beach
Law Offices of Michelle Brenard, SF
Levin Designs, Davis
Livingston Medical Group, Merced
Luminary Photography, Santa Monica

Magnolia Editions, Oakland
Menveg-Collier Property Management,
Palos Verdes
Merced Cnty Dept of Public Health
Merced County Div of Environmental Health
Merced/Mariposa County Asthma Coalition
Mercy Medical Center, Merced
Mike Bobbitt and Assoc., Sonoma
MJ Pramik and Assoc., SF
Mountain Solar Independent Energy
Systems, Grass Valley

National Wildlife Federation
Neighborhood Assoc of Oakland
Next Generation
N. California Solar Energy Assoc
New Option Lighting, SLO
New Space, San Francisco
North Coast Coop, Inc, Arcata,
NuEdison, San Jose
NWA Inc, Landscape Architects

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Ojai Chamber of Commerce
Our Children's Earth
Owens Electric and Solar, Burlingame

Pacific Environment
Physicians for Social Responsibility- LA
Planning and Conservation League
Public Citizen
PV Now

Pacific Power Management, Auburn
Pacific Smog, Seaside
Pacificans for Sustainable Development,
Pacifica
Pacificoncepts, Solana Beach
Pan Technologies, Santa Barbara
PsiNapse Technology Ltd, Castro Valley

R & P Construction, San Jose

Rainforest Action Network

Real Goods
Relational Culture Institute, Fresno
Redwood Coast Institute, Humboldt
Redwood Rubber LLC, Corte Madera
Renewable and Appropriate Energy
Laboratory, UC Berkeley
River Ridge Ranch LLC, Springville
Rohnert Park City Council
Russell Guitars, Redding

San Antonio Neighborhood Assoc of
Oakland

San Diego Chamber of Commerce

Santa Monica For Renter's Rights

Sanyo Energy Corp.

Sharp Solar

Sierra Club, California

Solar Integrated Technologies

South Coast Air Quality Management
District

Southern California Forum for Energy and
Human Concerns (SCF)

Students for a Greener Berkeley

Students for a Sustainable Stanford

Students for Social Responsibility at The
College of Marin

San Antonio Neighborhood Assoc of
Oakland

San Jose Religious Society of Friends

Sanctuary of the Dreaan, Jenner

Scenario International LLC, Sherman Oaks

Sculpturesite Gallery , SF

seeBox studio, Monterey

Sentech Measurements, Davis

SESCO Electrical Inc., Berkeley

Sierra Solar Systems, Grass Valley

Signia Fine Papers, San Rafael
Silicon Valley Telecom and Internet
Exchange, San Jose

Solar Works, Guerneville

Solar Works, Sebastopol

Solarwinds Northern Lights, Redway

Southwest Equity Appraisals, San Diego

Spectrum Energy inc

St Catherine of Siena School, Martinez

St. Patrick's Episcopal Church, Kenwood

Students for a Greener Berkeley

Students for a Sustainable Stanford

Students for Social Responsibility at College
of Marin

Sun Light and Power, Berkeley

Sustainable Energy Group, Nevada City

Swinerton Incorporated

Team Adelante Cycling Club, Pasadena

Terra Foundation, San Luis Obispo

Testorff Construction, Aptos

The Benefit Network, Los Angeles

The Environmental Action Group of the First

Unitarian Universalist Church of SD, San
Diego

The Evergreen Group, SF

The Rosebud Agency, SF

The Tucker Schoeman Venture, Claremont

Tim's Tunes, Woodacre

Transition Living Cooperative, San Martin

Trustprice.com, Milpitas

Turn-around Products, Martinez

UCLA African America Studies Dept

Union of Concerned Scientists

USF Dept of Env. Science

Velocity Café, Santa Monica

View Studio Inc., Carpinteria

Vote Solar Initiative

Vallejo Art District

Whodunit Productions, Santa Clarita

William Pettus, Architect, Berkeley

Winter and Ross, San Francisco

Women For: Orange County

Working Assets

World Council for Renewable Energy

Young Progressive Majority, LA

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ATTACHMENT #3

BILL NUMBER: SB 399 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY JUNE 21, 2005
AMENDED IN SENATE MAY 2, 2005
AMENDED IN SENATE APRIL 28, 2005

INTRODUCED BY Senator Escutia
(Coauthors: Senators
Liquist, Kehoe, Murray, Perata,
and Romero)

FEBRUARY 17, 2005

An act to amend Section 23004.1 of the Government Code, and to ~~repeal and add~~ amend Section 14124.791 f , and to add Section 14124.792 to, the Welfare and Institutions Code, relating to health services.

LEGISLATIVE COUNSEL'S DIGEST

SB 399, as amended, Escutia. Health services: 3rd-party liability.

(1) Existing law prescribes procedures under which a provider, beneficiary, or the Director of Health Services may bring an action or claim against a 3rd party who is liable for services rendered to a beneficiary under the Medi-Cal program. Existing law provides that, subject to a prior right of recovery of the director, a provider who has rendered services to a beneficiary because of an injury for which a 3rd party is liable and who has received payment under the Medi-Cal program shall be entitled to file a lien for the services provided thereto against any judgment, award, or settlement obtained by the beneficiary or the director against that 3rd party if the provider has made a full reimbursement of any fees paid to the department for those services.

This bill would revise these 3rd-party claim procedures. The bill would revise the provider lien procedures to ~~instead authorize~~ provide that the lien ~~for the reasonable and necessary charges for services provided to the beneficiary~~ shall be satisfied against the portion of any judgment, award, or settlement relating to past medical expenses ~~in the action or claim brought~~ obtained by the beneficiary or the director against a 3rd party. The bill would provide instead that the provider may recover only upon proof that the provider has made a full refund of all payments made by the Medi-Cal program to the provider for services rendered to a beneficiary under the Medi-Cal program. The bill would also establish procedures that would apply when there is a dispute between the provider and the beneficiary regarding the amount of a lien asserted.

(2) Existing law provides procedures under which, in any case in which a 3rd person is liable to pay for health services provided by a county to an injured or diseased person, the county may recover from that 3rd person or be subrogated to any right or claim that the injured or diseased person, including identified parties in interest, have against that 3rd person. Under these procedures, the county's right of action abates during the pendency of an action brought for damages against the 3rd person by the injured or diseased person and continues as a first lien against any judgment recovered by the injured or diseased person.

This bill would provide that the county's right of action would

continue under this provision as a first lien subordinate to a lien in the right of the Director of Health Services and, in addition, against any recovery by settlement, compromise, arbitration award, mediation settlement, or other recovery obtained by the injured or diseased person. The bill would also provide that a county enforcing a lien under these provisions, a physician or surgeon, or a public hospital as specified, is a provider for purposes of paragraph (1).

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 23004.1 of the Government Code is amended to read:

23004.1.

(a) Subject to Section 23004.3, in any case in which the county is authorized or required by law to furnish hospital, medical, surgical, or dental care and treatment, including prostheses and medical appliances, to a person who is injured or suffers a disease, under circumstances creating a tort liability upon some third person to pay damages therefor, the county shall have a right to recover from that third person the reasonable value of the care and treatment so furnished or to be furnished, or shall, as to this right, be subrogated to any right or claim that the injured or diseased person, his or her guardian, personal representative, estate, or survivors has against ~~such~~ that third person to the extent of the reasonable value of the care and treatment so furnished or to be furnished.

(b) The county may, to enforce rights established under subdivision (a), institute and prosecute legal proceedings against the third person who is liable for the injury or disease in the appropriate court, either in its own name or in the name of the injured person, his or her guardian, personal representative, estate, or survivors. This action shall be commenced within the period prescribed in Section 340 of the Code of Civil Procedure. In the event that the injured person, his or her guardian, personal representative, estate, survivors, or any of them brings an action for damages against the third person who is liable for the injury or disease, the county's right of action shall abate during the pendency of that action, and continue as a first lien, subordinate to the Director of Health Services' lien rights pursuant to Section 14124.74 of the Welfare and Institutions Code, against any judgment, settlement, compromise, arbitration award, mediation settlement, or other recovery obtained by the injured or diseased person, his or her guardian, personal representative, estate, or survivors, against the third person who is liable for the injury or disease, to the extent of the reasonable value of the care and treatment so furnished or to be furnished. When the third person who is liable is insured, the county shall notify the third person's insurer, when known to the county, in writing of the lien within 30 days following the filing of the action by the injured or diseased person, his or her guardian, personal representative, estate, or survivors, against the third person who is liable for the injury or disease. However, the failure to so notify the insurer shall not prejudice the claim or cause of action of the injured or diseased person, his or her guardian, personal representative, estate, or survivors, or the county.

(c) A county, in enforcing its lien rights under this section, is subject to subdivisions (d) and (e) of Section 14124.791 of, and Section 14124.792 of, the Welfare and Institutions Code.

~~SEC. 2. Section 14124.791 of the Welfare and Institutions Code is~~

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~~repealed.~~

~~SEC. 3. Section 14124.791 is added to the Welfare and Institutions Code, to read:~~

~~14124.791.~~

~~(a) (1) The Legislature finds and declares all of the following.~~

~~(A) Public hospitals face an overwhelming task in their efforts to provide access to health services and quality care to the indigent and uninsured in the communities they serve. Reductions in federal funding, the cost of care provided in emergency rooms, pressure from providers to increase reimbursement rates, pressure from the state and insurers to reduce costs, and increased regulation to improve patient safety and the quality of care, have put many public hospitals on the brink of closure.~~

~~(B) Public hospitals are needlessly constrained in meeting the cost of operations by legal impediments to their ability to recover the reasonable costs of care provided from responsible parties.~~

~~(C) It is necessary to allow public hospitals to exercise lien recovery rights relative to an individual that has received free care at a public hospital when that patient receives compensation for the cost of medical expenses resulting from acts of a third party.~~

~~(D) Granting providers lien recovery rights increases a provider's incentive to participate in the Medi-Cal program, thereby improving Medi-Cal beneficiary's access to care.~~

~~(E) Granting providers lien recovery rights increases a provider's incentive to notify the State Department of Health Services of the existence of third-party liability.~~

~~(F) Allowing providers to recover payment from responsible third-party tortfeasors, subject to the provider's full refund to the State Department of Health Services, furthers the goal of the Medi-Cal program to be the payer of last resort, results in savings to the state, and assists the state in carrying out its obligations to identify and recover funds from third parties that are responsible to pay for the care provided to Medi-Cal beneficiaries.~~

~~(2) It is the intent of the Legislature in enacting the act that added this section to respond to the invitation of the California Supreme Court in *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, to permit providers to recover their reasonable and necessary charges while protecting Medi-Cal beneficiaries' rights to recover full damages from responsible third-party tortfeasors, and to preclude tortfeasors from receiving the benefit of the Medi-Cal program at the expense of providers, beneficiaries, and taxpayers.~~

~~(b) Subject to the director's prior right of recovery, a provider who has rendered services to a beneficiary because of an injury for which a third party is or may be liable and who has received payment under the Medi-Cal program shall be entitled to a lien for the reasonable and necessary charges for services provided to the beneficiary against the portion of any judgment, award, or settlement relating to past medical expenses obtained by the beneficiary or the director against that third party. A provider may recover upon the lien only upon proof that the provider has made a full refund of all payments made by the Medi-Cal program to the provider for these services. Proof of refund of all payments made to the department shall be in the form of a copy of the check to the department and appropriate representation that the check was mailed to the department.~~

~~(c) If either the beneficiary or the director brings an action or claim against the third party, the party bringing the action shall, within 30 days of bringing the action, give written notice to any provider who is eligible to file a lien under subdivision (b) of, to the extent known, the name and address of each third party and the name and address of each insurance carrier that has insured the third party against the liability and, to the extent applicable, the name of the action and court or state or local agency in which the action or claim is brought. Notice shall be given by personal service or~~

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~~registered mail, and proof of service shall be filed in the action or claim.~~

~~(d) (1) The lien shall become perfected when the provider sends a written notice containing the name and address of the injured person, the name and location of the provider, and the amount claimed as reasonable and necessary charges, to the beneficiary's attorney, if known, and if not known, to the beneficiary or the beneficiary's legal representative and to the director.~~

~~(2) If notice is given to the beneficiary and the provider subsequently has notice that the beneficiary has legal representation, the provider shall give written notice to the beneficiary's attorney. The failure to give notice to the beneficiary's attorney pursuant to this paragraph shall not invalidate the lien.~~

~~(3) The written notice required by this subdivision shall be sent by registered mail.~~

~~(4) The amount claimed in the notice, or so much of that amount as can be satisfied from any final judgment, compromise, or settlement agreement after paying any other medical provider lien, the priority of which is statutorily required, shall be deemed to be included within any judgment, award, or settlement unless the judgment, award, or settlement expressly allocates a lesser amount. Any recovery on the lien shall be limited to that portion of the judgment, award, or settlement constituting compensation for past medical expenses.~~

~~(e) Where a provider is entitled to file a lien under this section, the third party may not use the amount paid by Medi Cal to reduce the amount of its liability.~~

~~(f) If the beneficiary has filed a third party action or claim, the court where the action or claim was filed shall have jurisdiction over a dispute between the provider and the beneficiary regarding the amount of a lien asserted pursuant to this section that is based upon an allocation of damages contained in a settlement or compromise of the third party action or claim. If no third party action or claim has been filed, any superior court in California where venue would have been proper had a claim or action been filed shall have jurisdiction over the motion. The motion may be filed as a special motion and treated as an ordinary law and motion proceeding and subject to regular motion fees. The reimbursement determination motion shall be treated as a special proceeding of a civil nature pursuant to Part 3 (commencing with Section 1063) of the Code of Civil Procedure. When no action is pending, the person making the motion shall be required to pay a first appearance fee. When an action is pending, the person making the motion shall pay a regular law and motion fee.~~

~~(g) In any motion filed pursuant to subdivision (f), all of the following shall apply:~~

~~(1) The provider asserting a lien pursuant to this section and the beneficiary shall be made a party to the motion, and either the beneficiary or the provider may file the motion. In cases where the third party claim was tried to a verdict or judgment, the motion shall be heard by the trial judge, if available. In cases where an action has been filed and settled or otherwise resolved prior to verdict or judgment, the motion shall be heard by the judge to whom the matter was assigned, or, if no judge was assigned or the assigned judge is unavailable, in the regular law and motion department or by a judge assigned to hear the matter. When no action has previously been filed, the motion shall be assigned and heard pursuant to the regular law and motion procedures in the court where the motion is filed.~~

~~(2) Within 14 days of a request from a provider, the beneficiary shall serve a true and correct copy of those portions of the settlement document upon which the asserted allocation is based that are relevant to the determination motion. If not requested by a provider, a true and correct copy of those portions of the settlement~~

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~~document on which the asserted allocation is based that are relevant to the determination motion shall be served with the motion.~~

~~(3) (A) If the beneficiary is the moving party, notice of the motion shall be addressed to any counsel representing the provider on the lien, if known, and if not known, to the provider at the provider's address as shown on the notice of lien. If the provider is the moving party, notice of the motion shall be addressed to the beneficiary's counsel, if known. If the beneficiary is not represented by counsel, the notice of motion shall be mailed to the beneficiary by registered mail. Proof of service in compliance with this subdivision shall be filed with the court.~~

~~(B) Notice required under this paragraph shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.~~

~~(4) If the beneficiary is represented by counsel, the beneficiary shall bear the burden of proof as to the fairness of the allocation and the burden of producing evidence, by declaration or other written form, as to the manner in which the allocation was made and the evidentiary basis for the allocation. If the beneficiary is not represented by counsel, the party making the motion shall bear the burden of proof as to the fairness of the allocation and the burden of producing evidence, by declaration or other written form, as to the manner in which the allocation was made and the evidentiary basis for the allocation.~~

~~(5) In determining the fairness of the allocation, the court shall consider the relationship of damages for past medical expenses to the total damages claimed and the total amount of the settlement.~~

~~(6) The court shall issue its findings, decision, and order, which shall be considered the final determination of the parties' rights and obligations with respect to the provider's lien, unless the settlement is contingent on an acceptable allocation of the settlement proceeds, in which case, the court's findings, decision, and order shall be considered a tentative determination. If the beneficiary does not serve notice of a rejection of the tentative determination, which shall be based solely upon a rejection of the contingent settlement, within 30 days of the notice of entry of the court's tentative determination, subject to further consideration by the court pursuant to paragraph (7), the tentative determination shall become final.~~

~~(7) If the beneficiary does not accept the tentative determination, which shall be based solely upon a rejection of the contingent settlement, any party may subsequently seek further consideration of the court's findings upon application to modify the prior findings, decision, or order, based on new or different facts or circumstances. The application shall include an affidavit showing that application was made before, when, and to what judge, what order or decision was made, and what new or different facts or circumstances, including a different settlement, are claimed to exist. Upon further consideration, the court may modify the allocation in the interest of fairness and for good cause.~~

~~(h) No claim authorized by this section shall be permitted to the extent that the claim would reduce the director's right to recover pursuant to Section 14124.78. However, the department's receipt of the provider's refund pursuant to subdivision (b) shall extinguish the director's claim for the same services. Section 1008 of the Code of Civil Procedure does not apply to any motion filed pursuant to subdivision (f).~~

~~(i) Any person, firm, or corporation, including, but not limited to, an insurance carrier, who receives notice of a lien asserted pursuant to this section and who makes any payment to the injured person, or to his or her attorney, heirs, or legal representative, or the injuries the beneficiary sustained, after receipt of this notice, without paying to the provider the amount the provider is entitled to receive as payment on its lien, shall be liable to the provider for that amount.~~

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~~(j) For purposes of this section, "reasonable and necessary charges" means the usual, customary, and reasonable charges for medical services in the geographic region where the services were provided, when these services were medically necessary to treat the injuries allegedly caused by a third party tortfeasor. The beneficiary has the burden of proof in a third party action or claim to establish the reasonable value of medical and hospital expenses, reasonably required and actually provided for the treatment of the beneficiary as the result of a third party's conduct.~~

~~(k) The amount paid to the provider by Medi-Cal shall not be considered in the determination of the amount of a provider's lien or in the determination of the amount of the third party tortfeasor's liability to the beneficiary. This provision overturns Hanif v. Housing Authority (1988) 200 Cal App 3d 635, to the extent that case is inconsistent with this provision. This provision is declarative of existing law as stated in Welford v. Southern Cal Rapid Transit Dist. (1970) 2 Cal 3d 1.~~

~~(l) When a final judgment in the third party claim includes a special finding by a judge, jury, or arbitrator that the beneficiary is partially at fault, the provider's lien shall be reduced by the same comparative fault percentage by which the beneficiary's recovery or past medical expenses was reduced.~~

~~(m) At the request of the beneficiary, the court or arbitrator in the third party action or claim shall provide for special findings with respect to compensation allocated to past medical expenses.~~

~~(n) The provider's lien shall be reduced by the pro rata amount commensurate with the beneficiary's reasonable attorney's fees and costs in accordance with the common fund doctrine. The amount of the reduction in the provider's lien pursuant to this subdivision shall accrue solely to the benefit of the beneficiary and shall not constitute additional attorney's fees and costs owed or payable to the beneficiary's attorney.~~

~~(o) If any provision of this section, or the application of any revision of this section to any person, firm, corporation, or other entity or to any circumstance or situation, shall be held invalid, the remaining provisions of this section shall not be affected hereby, and shall be given effect.~~

~~(p) Subdivision (e) shall have no effect on the rights of parties or public agencies under Section 985 of the Government Code.~~

~~(q) As used in this section "provider" means all of the following:~~

~~(1) A county enforcing a lien pursuant to Section 23004.1 of the Government Code.~~

~~(2) A physician or surgeon required to be licensed under Section 450 of the Business and Professions Code.~~

~~(3) Any public hospital, including those operated under the auspices of a county or other local government.~~

SEC. 2. Section 14124.791 of the Welfare and Institutions Code is amended to read:
14124.791.

(a) The Legislature finds and declares all of the following:

(1) Granting providers lien recovery rights increases a provider's incentive to participate in the Medi-Cal program, thereby improving Medi-Cal beneficiary's access to care.

(2) Granting providers lien recovery rights increases a provider's incentive to notify the State Department of Health Services of the existence of third-party liability.

(3) Allowing providers to recover payment from responsible third-party tortfeasors, subject to the provider's full refund to the State Department of Health Services, furthers the goals of the Medi-Cal program to be the payer of last resort, results in savings to the state, and assists the state in carrying out its obligations to identify and recover funds from third parties that are responsible

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to pay for the care provided to Medi-Cal beneficiaries.

(4) Public hospitals face an overwhelming task in their efforts to provide access to health services and quality care to the indigent and uninsured in the communities they serve. Reductions in federal funding, the cost of care provided in emergency rooms, pressure from providers to increase reimbursement rates, pressure from the state and insurers to reduce costs, and increased regulation to improve patient safety and the quality of care, have put many public hospitals on the brink of closure.

(5) Public hospitals are needlessly constrained in meeting the cost of operations by legal impediments to their ability to recover the reasonable costs of care provided from responsible parties.

(6) It is necessary to allow public hospitals to exercise lien recovery rights relative to an individual that has received free care at a public hospital when that patient receives compensation for the cost of medical expenses resulting from acts of a third party.

(b) Subject to the director's prior right of recovery, a provider who has rendered services to a beneficiary because of an injury for which a third party is liable and who has received payment under the Medi-Cal program shall be entitled to file a lien for all fees for services provided to the beneficiary against any judgment, award, or settlement obtained by the beneficiary or the director against that third party. The lien shall be satisfied against the portion of any judgment, award, or settlement relating to past medical expenses obtained by the beneficiary or the director against any third party. A provider may only recover upon the lien ~~if~~ upon proof that the provider has made a full ~~reimbursement~~ refund of ~~any fees paid by the department~~ all payments made by the Medi-Cal program to the provider for those services. Proof of making the refund to the department shall be in the form of a copy of the check to the department and appropriate representation that the check was mailed to the department.

~~---(b)~~

(c) If either the beneficiary or the director brings an action or claim against the third party, the party bringing the action shall, within 30 days of bringing the action, give written notice to any provider who is eligible to file a lien under subdivision ~~(a)~~ (b) of the action and of the name of the court or state or local agency in which the action or claim is brought. Notice shall be given by personal service or registered mail, and proof of service shall be filed in the action or claim.

~~---(c) The provider's claim for reimbursement for fees for services rendered to the beneficiary shall be limited to the amount of the fees less 25 percent, which represents the provider's reasonable share of attorneys' fees for prosecution of the action and of the cost of litigation expense.~~

~~---(d) No claim authorized by this section shall be permitted to the extent that the claim would reduce the director's right to recover pursuant to Section 14124.78.~~

(d) (1) The lien shall become perfected when the provider sends a written notice containing the name and address of the injured person, the name and location of the provider, and the amount claimed the amount of all fees for services provided, to the beneficiary's attorney, if known, and if not known, to the beneficiary or the beneficiary's legal representative and to the director.

(2) If notice is given to the beneficiary and the provider subsequently has notice that the beneficiary has legal representation, the provider shall also give written notice to the beneficiary's attorney. The failure to give notice to the beneficiary'

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attorney pursuant to this paragraph shall not invalidate the lien.

(3) The written notice required by this subdivision shall be sent by registered mail.

(4) The amount claimed in the notice, or so much of that amount as can be satisfied from any final judgment, compromise, or settlement agreement after paying any other medical provider lien, the priority of which is statutorily required, shall be deemed to be included within any judgment, award, or settlement unless the judgment, award, or settlement expressly allocates a lesser amount. Any recovery on the lien shall be limited to that portion of the judgment, award, or settlement constituting compensation for past medical expenses.

(e) Where a provider is entitled to file a lien under this section, the third party may not use the amount paid by Medi-Cal to reduce the amount of its liability. This subdivision shall have no effect on the rights of parties under Section 3333.1 of the Civil Code or public agencies under Section 985 of the Government Code.

SEC. 3. Section 14124.792 is added to the Welfare and Institutions Code, to read:
14124.792.

(a) If the beneficiary has filed a third-party action or claim, the court where the action or claim was filed shall have jurisdiction over a dispute between the provider and the beneficiary regarding the amount of a lien asserted pursuant to this section that is based upon an allocation of damages contained in a settlement or compromise of the third-party action or claim. If no third-party action or claim has been filed, any superior court in California where venue would have been proper had a claim or action been filed shall have jurisdiction over the motion. The motion may be filed as a special motion and treated as an ordinary law and motion proceeding and subject to regular motion fees. The reimbursement determination motion shall be treated as a special proceeding of a civil nature pursuant to Part 3 commencing with Section 1063) of the Code of Civil Procedure. When no action is pending, the person making the motion shall be required to pay a first appearance fee. When an action is pending, the person making the motion shall pay a regular law and motion fee.

(b) In any motion filed pursuant to subdivision (a), all of the following shall apply:

(1) The provider asserting a lien pursuant to Section 14124.791 and the beneficiary shall be made a party to the motion, and either the beneficiary or the provider may file the motion. In cases where the third-party claim was tried to a verdict or judgment, the motion shall be heard by the trial judge, if available. In cases where an action has been filed and settled or otherwise resolved prior to verdict or judgment, the motion shall be heard by the judge to whom the matter was assigned, or, if no judge was assigned or the assigned judge is unavailable, in the regular law and motion department or by judge assigned to hear the matter. When no action has previously been filed, the motion shall be assigned and heard pursuant to the regular law and motion procedures in the court where the motion is filed.

(2) Within 14 days of a request from a provider, the beneficiary shall serve a true and correct copy of those portions of the settlement document upon which the asserted allocation is based that are relevant to the determination motion. If not requested by a provider, a true and correct copy of those portions of the settlement document on which the asserted allocation is based that are relevant to the determination motion shall be served with the motion.

(3) (A) If the beneficiary is the moving party, notice of the motion shall be addressed to any counsel representing the provider on the lien, if known, and if not known, to the provider at the

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provider's address as shown on the notice of lien. If the provider is the moving party, notice of the motion shall be addressed to the beneficiary's counsel, if known. If the beneficiary is not represented by counsel, the notice of motion shall be mailed to the beneficiary by registered mail. Proof of service in compliance with this subdivision shall be filed with the court. Notice shall also be given to counsel for the third party, or to the third party if not represented by counsel, in the underlying action.

(B) Notice required under this paragraph shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(4) If the beneficiary is represented by counsel, the beneficiary shall bear the burden of proof as to the fairness of the allocation and the burden of producing evidence, by declaration or other written form, as to the manner in which the allocation was made and the evidentiary basis for the allocation. If the beneficiary is not represented by counsel, the party making the motion shall bear the burden of proof as to the fairness of the allocation and the burden of producing evidence, by declaration or other written form, as to the manner in which the allocation was made and the evidentiary basis for the allocation.

(5) In determining the fairness of the allocation, the court shall consider the relationship of damages for past medical expenses to the total damages claimed and the total amount of the settlement.

(6) The court shall issue its findings, decision, and order, which shall be considered the final determination of the parties' rights and obligations with respect to the provider's lien, unless the settlement is contingent on an acceptable allocation of the settlement proceeds, in which case, the court's findings, decision, and order shall be considered a tentative determination. If the beneficiary does not serve notice of a rejection of the tentative determination, which shall be based solely upon a rejection of the contingent settlement, within 30 days of the notice of entry of the court's tentative determination, subject to further consideration by the court pursuant to paragraph (7), the tentative determination shall become final.

(7) If the beneficiary does not accept the tentative determination, which shall be based solely upon a rejection of the contingent settlement, any party may subsequently seek further consideration of the court's findings upon application to modify the prior findings, decision, or order, based on new or different facts or circumstances. The application shall include an affidavit showing that application was made before, when, and to what judge, what order or decision was made, and what new or different facts or circumstances, including a different settlement, are claimed to exist. Upon further consideration, the court may modify the allocation in the interest of fairness and for good cause.

(c) Any person, firm, or corporation, including, but not limited to, an insurance carrier, who receives notice of a lien asserted pursuant to this section and who makes any payment to the injured person, or to his or her attorney, heirs, or legal representative, for the injuries the beneficiary sustained, after receipt of this notice, without paying to the provider the amount the provider is entitled to receive as payment on its lien, shall be liable to the provider for that amount.

(d) The amount paid to the provider by Medi-Cal shall not be considered in the determination of the amount of a provider's lien or in the determination of the amount of the third-party tortfeasor's liability to the beneficiary. This provision overturns Hanif v. Housing Authority (1988) 200 Cal.App.3d 635, to the extent that case is inconsistent with this provision. This provision is declarative of existing law as stated in Helfend v. Southern Cal Rapid Transit Dist. (1970) 2 Cal.3d 1.

(e) When a final judgment in the third-party claim includes a special finding by a judge, jury, or arbitrator that the beneficiary

F-1.40

as partially at fault, the provider's lien shall be reduced by the same comparative fault percentage by which the beneficiary's recovery or past medical expenses was reduced.

(f) At the request of the beneficiary, the court or arbitrator in the third-party action or claim shall provide for special findings with respect to compensation allocated to past medical expenses.

(g) The provider's lien shall be reduced by the pro rata amount commensurate with the beneficiary's reasonable attorney's fees and costs in accordance with the common fund doctrine. The amount of the reduction in the provider's lien pursuant to this subdivision shall accrue solely to the benefit of the beneficiary and shall not constitute additional attorney's fees and costs owed or payable to the beneficiary's attorney.

(h) If any provision of this section, or the application of any provision of this section to any person, firm, corporation, or other entity or to any circumstance or situation, shall be held invalid, the remaining provisions of this section shall not be affected hereby, and shall be given effect.

(i) No claim authorized by this section shall be permitted to the extent that the claim would reduce the director's right to recover pursuant to Section 14124.78. However, the department's receipt of the provider's refund pursuant to subdivision (b) of Section 4124.791 shall extinguish the director's claims for the same services. Section 1008 of the Code of Civil Procedure does not apply to any motion filed pursuant to subdivision (a).

(j) As used in this section, "provider" means any of the following:

(1) A county enforcing a lien pursuant to Section 23004.1 of the Government Code.

(2) A physician or surgeon required to be licensed under Section 050 of the Business and Professions Code.

(3) A hospital that meets the requirements for placement on the disproportionate share list pursuant to subdivision (e) of Section 4105.98.

(4) Any public hospital, including a hospital operated under the auspices of a county or other local government.

F-1.41



1400 K Street, Suite 400 • Sacramento, California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

May 27, 2005

Senator Martha Escutia
State Capitol, Room 5080
Sacramento, CA 95814

RE: SB 399 (Escutia). Health Care Liens. MediCal

NOTICE OF LEAGUE OPPOSITION

Dear Senator Escutia:

On behalf of the League of California Cities, I regret to inform you that the League must respectfully oppose SB 399. This bill restores a health care provider's Medi-Cal lien rights for injuries caused by a third party. The bill is limited to public hospitals and county physicians.

Our concerns about the bill are similar to those we expressed for the two previous bills related to this topic. While the League is sympathetic to the fiscal condition of county and public hospitals, we believe that the provisions of SB 399 will result in increased insurance costs to local governments, whether or not they are self-insured. By permitting a health care provider to recover its expenses from a Medi-Cal beneficiary for injuries caused by third parties, SB 399 is a back door way to increase Medi-Cal funding and public hospital reimbursement rates. In addition to the potential negative fiscal impacts on local governments, we are concerned about the precedent that SB 399 would establish. If it covers Medi-Cal and public healthcare providers now, would another bill in the future expand the provisions to all parties and non-public hospitals as well.

For these reasons, the League must respectfully oppose SB 399.

Sincerely,

Yvonne Hunter

Yvonne Hunter
Legislative Representative

cc: Members and Consultant, Assembly Judiciary Committee

SB399op.doc

F-1.42



Consumers, Small Businesses, and Taxpayers Should NOT be Forced to Subsidize Medi-Cal and Higher Fees for Personal Injury Attorneys

Say "NO" to Higher Insurance Rates, Say "NO" to SB 399

Wrong Solution to a Legitimate Problem:

Public hospitals have a legitimate problem. For years, the State has been failing to fully fund the Medi-Cal program, and many county hospitals are struggling financially. SB 399 (Escutia) has been introduced under the guise of helping to provide more revenues to public hospitals. But SB 399 is a misguided solution that will give more money to personal injury attorneys and leave consumers holding the bill. Here's why consumers, small businesses and others are lining up to oppose SB 399:

SB 399 is nothing more than a hidden tax that would force all California insurance consumers to subsidize the state's failure to adequately fund Medi-Cal.

- California ranks dead last in the nation in reimbursing hospitals for its Medi-Cal patients, but consumers shouldn't be asked to foot the bill.
- **SB 399 will raise insurance costs for homeowners, drivers, businesses & taxpayers – anyone with liability insurance – by 10-12%.**
- Under SB 399, all insurance consumers – not just those involved in a claim -- will get hit with higher insurance rates because of the added costs, higher settlements, and increased lawsuits.

SB 399 Would Force California's Businesses, Taxpayers and Consumers to Subsidize Not Just the Government's Under-funding of Medi-Cal, but More Lawsuits and Higher Personal Injury Attorney Fees!

- Personal injury attorneys have partnered with public hospitals in an unusual alliance to support SB 399. Their motive: **seek the highest medical reimbursement rate possible so that they can extract bigger settlements and verdicts and higher attorney fees.**
- SB 399 would allow personal injury lawyers to sue another party for not only the agreed upon cost of providing care for a *Medi-Cal patient*, but also for **costs that are significantly higher than traditional contractual rates between hospitals and private insurance companies!**
- These additional charges are intended to help subsidize public hospitals and the Medi-Cal system, but the vast majority of money generated by this bill will not go to public hospitals. It will be siphoned off to pay higher non-medical general damage awards and higher fees to personal injury attorneys.

Say NO to A Hidden Tax
to Fund Medi-Cal, Higher Health Care Costs and Personal Injury Lawyers

F-1.43



We Oppose SB 399 and Higher Insurance Rates!

(Coalition list as of 6.20.05)

Ethnic and Community Groups

California Black Chamber of Commerce
California Mexican-American Chamber of Commerce
Mexican-American Chamber of Commerce and Industry of Southern California
Sacramento Black Chamber of Commerce
Black Chamber of Commerce of Los Angeles County
National Coalition of Hispanic Organizations

Small Business and Employer Groups

Small Business Action Committee
California Chamber of Commerce
California Retailers Association
California Business Roundtable
California Grocers Association
California Restaurant Association
California Manufacturers & Technology Association
California Building Industry Association
California Business Properties Association
Consulting Engineers & Land Surveyors of California
Los Angeles Area Chamber of Commerce
Palm Desert Chamber of Commerce
Clovis Chamber of Commerce
Greater Geary Boulevard Merchant Association
South Orange County Regional Chamber of Commerce

Healthcare

California Association of Physician Groups

Local Governments

League of California Cities

Senior Groups

California Senior Advocates League

Taxpayer Advocates

Howard Jarvis Taxpayers Association
California Taxpayers Association
San Diego Tax Fighters
United Organization of Taxpayers, Inc.
National Tax Limitation Committee
Yolo County Taxpayers Association
Ventura County Taxpayers Association

Consumer/Citizen Groups

Consumers First, Inc.
Consumers Coalition of California
Civil Justice Association of California
National Foundation of Consumers and Taxpayers
Orange County Citizens Against Lawsuit Abuse
Central California Citizens Against Lawsuit Abuse
Los Angeles Citizens Against Lawsuit Abuse
Silicon Valley Citizens Against Lawsuit Abuse

Agriculture

California Farm Bureau Federation

F-1.44



Say "NO" to Higher Insurance Rates

OPPOSE SB 399

- Yes, you can use my name, title and signature on the joint letter opposing SB 399 as well as list my organization in opposition to SB 399 in your materials.

Please complete the following information:

Company or Organization Name/Employer

Name

Title

Phone number

E-mail Address

Fax Number

Sign here

Date

Dear Senator Escutia,

On behalf of the senior, small business, taxpayer, local government and other diverse community organizations, we strongly oppose your SB 399 (Escutia) SB 399 is nothing more than a hidden tax that would force all California insurance consumers to subsidize the State's failure to adequately fund its Medi-Cal program.

SB 399 will raise insurance costs for homeowners, drivers, businesses & taxpayers – anyone with liability insurance – by 10-12%. And, all insurance consumers – not just those involved in a claim – will get hit with higher insurance rates because of the added costs, higher settlements, and increased lawsuits.

We recognize that public hospitals have a legitimate problem. For years, the State has been failing to fully fund the Medi-Cal program, and many county hospitals are struggling financially. However, while SB 399 has been introduced under the guise of helping to provide more revenues to public hospitals, the vast majority of money generated by this bill – and paid for by our constituencies – will not go to public hospitals. Instead, it will be siphoned off to pay higher non-medical general damage awards and higher fees to personal injury attorneys.

SB 399 would allow personal injury lawyers to sue another party for not only the agreed upon cost of providing care for a *Medi-Cal patient*, but also for costs that are significantly higher than traditional contractual rates between hospitals and private insurance companies. The bill creates an incentive for personal injury lawyers to seek the highest medical reimbursement rate possible so they can extract bigger settlements and verdicts and higher attorneys' fees.

SB 399 would do nothing to solve the legitimate long-term under-funding of the state's Medi-Cal system. Instead, it is a misguided solution that would shift responsibility to many of us who can't afford the added expense.

Please fax the completed form to 916-442-3510.

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We Oppose SB 399 and Higher Insurance Rates!

(Coalition list as of 6.20.05)

Ethnic and Community Groups

California Black Chamber of Commerce
California Mexican-American Chamber of Commerce
Mexican-American Chamber of Commerce and Industry of Southern California
Sacramento Black Chamber of Commerce
Black Chamber of Commerce of Los Angeles County
National Coalition of Hispanic Organizations

Small Business and Employer Groups

Small Business Action Committee
California Chamber of Commerce
California Retailers Association
California Business Roundtable
California Grocers Association
California Restaurant Association
California Manufacturers & Technology Association
California Building Industry Association
California Business Properties Association
Consulting Engineers & Land Surveyors of California
Los Angeles Area Chamber of Commerce
Palm Desert Chamber of Commerce
Clovis Chamber of Commerce
Greater Geary Boulevard Merchant Association
South Orange County Regional Chamber of Commerce

Healthcare

California Association of Physician Groups

Local Governments

League of California Cities

Senior Groups

California Senior Advocates League

Taxpayer Advocates

Howard Jarvis Taxpayers Association
California Taxpayers Association
San Diego Tax Fighters
United Organization of Taxpayers, Inc.
National Tax Limitation Committee
Yolo County Taxpayers Association
Ventura County Taxpayers Association

Consumer/Citizen Groups

Consumers First, Inc.
Consumers Coalition of California
Civil Justice Association of California
National Foundation of Consumers and Taxpayers
Orange County Citizens Against Lawsuit Abuse
Central California Citizens Against Lawsuit Abuse
Los Angeles Citizens Against Lawsuit Abuse
Silicon Valley Citizens Against Lawsuit Abuse

Agriculture

California Farm Bureau Federation

F-1.46

IR 2726 IH

109th CONGRESS

1st Session

H. R. 2726

To prohibit municipal governments from offering telecommunications, information, or cable services except to remedy market failures by private enterprise to provide such services.

IN THE HOUSE OF REPRESENTATIVES

May 26, 2005

Mr. SESSIONS introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prohibit municipal governments from offering telecommunications, information, or cable services except to remedy market failures by private enterprise to provide such services.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Preserving Innovation in Telecom Act of 2005'.

SEC. 2. PROHIBITION ON MUNICIPAL SERVICES.

(a) Amendment- Section 253 of the Communications Act of 1934 (47 U.S.C. 253) is amended by adding at the end the following new subsection:

(g) Provision of Services by State and Local Governments and Their Affiliates-

(1) PROHIBITION- Effective 60 days after the date of enactment of the Preserving Innovation in Telecom Act of 2005, neither any State or local government, nor any entity affiliated with such a government, shall provide any telecommunications, telecommunications service, information service, or cable service in any geographic area within the jurisdiction of such government in which a corporation or other private entity that is not affiliated with any State or local government is offering a substantially similar service.

(2) GRANDFATHER PROVISION- Paragraph (1) shall not prohibit a State or local government or affiliated entity thereof from providing in any geographic area within the jurisdiction of such government any service that such government or entity was providing on the date of enactment of the Preserving Innovation in Telecom Act of 2005.'

(b) Conforming Amendment- Subsection (f) of section 621 of the Communications Act of 1934 (47 U.S.C. 541 (f)) is repealed.

END

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F-1.98

ATTACHMENT #4

BILL NUMBER: SB 1059 AMENDED
BILL TEXT

AMENDED IN SENATE MAY 27, 2005
AMENDED IN SENATE APRIL 26, 2005
AMENDED IN SENATE APRIL 18, 2005
AMENDED IN SENATE APRIL 13, 2005
AMENDED IN SENATE APRIL 4, 2005

INTRODUCED BY Senators Escutia and Morrow

FEBRUARY 22, 2005

An act to add Chapter 4.3 (commencing with Section 25330) to Division 15 of the Public Resources Code, relating to electricity transmission.

LEGISLATIVE COUNSEL'S DIGEST

SB 1059, as amended, Escutia. Electric transmission corridors.

(1) Existing law requires the State Energy Resources Conservation and Development Commission to adopt a strategic plan for the state's electric transmission grid using existing resources. Existing law requires that the plan identify and recommend actions required to implement investments needed to ensure reliability, relieve congestion, and to meet future growth in load and generation, including, but not limited to, renewable resources, energy efficiency, and other demand reduction measures.

This bill would authorize the commission to designate a transmission corridor zone on its own motion or by application of a person who plans to construct a high-voltage electric transmission line within the state. The bill would provide that the designation of a transmission corridor shall serve to identify a feasible corridor in which can be built a future transmission line that is consistent with the state's needs and objectives as set forth in the strategic plan adopted by the commission. The bill would prescribe procedures for the designation of a transmission corridor, including publication of the request for designation and request for comments, coordination with federal agencies and California Native American governments, informational hearings, and requirements for a proposed decision.

The bill would require the commission, after designating a transmission corridor zone, to identify that transmission corridor zone in its subsequent strategic plans and to regularly review and revise its designated transmission corridor zones as necessary, but not less than once every 6 years.

The bill would require a city or county, within 12 months after receiving a notice from the commission of a transmission corridor zone, to amend its general plan consistent with the commission's designation or revision.

The bill would require a city or county, within 10 days of accepting as complete an application for a development project within a designated transmission corridor zone that the city or county determines would threaten the potential to construct a high-voltage electric transmission line, to notify the commission of the proposed development project. The bill would require the commission, upon making a specified finding regarding the proposed development project, to provide written comments to the city or county and would require the city or county to consider the commission's comments.

The bill would impose a state-mandated local program by imposing new duties upon local agencies.

B 1059 Senate Bill - AMENDED

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

The Legislature finds and declares all of the following:

(a) California currently lacks an integrated, statewide approach to electric transmission planning and permitting that addresses the state's critical energy and environmental policy goals and allows electric transmission projects to move seamlessly from the planning phase into the permitting phase for timely approval and construction of needed electric transmission lines.

(b) Planning for and establishing a high-voltage electric transmission system to accommodate the development of renewable resources within the state, facilitate bulk power transactions, ensure access to out-of-state regions that have surplus power available, and reliably and efficiently supply existing and projected load growth is vital to the future economic and social well-being of California.

(c) To promote the efficient use of the existing transmission system, the state should do both of the following:

(1) Encourage the use of existing rights-of-way, the expansion of existing rights-of-way, and the creation of new rights-of-way in that order.

(2) Promote the efficient use of new rights-of-way, where needed, to improve system efficiency and the environmental performance of the transmission system.

(d) The construction of new high-voltage electric transmission lines within new or existing corridors has become increasingly difficult and may impose financial hardships and adverse environmental impacts on the state and its residents. It is in the interest of the state, therefore, through the electricity transmission planning process, to accomplish all of the following:

(1) Identify the long-term needs for electric transmission corridor zones within the state.

(2) Work with stakeholders, appropriate federal, state, and local agencies, and the public to study transmission corridor zone alternatives and designate appropriate corridor zones for future use to ensure reliable and efficient delivery of electricity for California's residents.

(3) Integrate transmission corridor zone planning at the state level with local planning so that designated corridor zones are reflected in local general and specific plans.

(e) Orderly planning and development of needed high-voltage electric transmission lines through the designation of transmission corridor zones is an issue of statewide concern.

SEC. 2 Chapter 4.3 (commencing with Section 25330) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 4.3. Designation of Transmission Corridors

25330.

For purposes of this chapter, the following terms have the following meanings:

F-1.50

(a) "Feasible" has the same meaning as in Section 21061.1.

(b) "High-voltage electric transmission line" means an electric transmission line with an operating capacity of at least 200 kilovolts, or that is under the operational control of the California Independent System Operator.

(c) "Transmission corridor zone" means the geographic area necessary to accommodate the construction and operation of one or more high-voltage electric transmission lines, consistent with existing land uses and land uses identified in local general or specific plans, to the extent feasible.

25331.

(a) The commission may designate a transmission corridor zone on its own motion or by application of a person who plans to construct a high-voltage electric transmission line within the state. The designation of a transmission corridor zone shall serve to identify a feasible corridor in which can be built a future high-voltage electric transmission line that is consistent with the state's needs and objectives as set forth in the strategic plan adopted pursuant to Section 25324.

(b) A person planning to construct a high-voltage electric transmission line may submit to the commission an application to designate a proposed transmission corridor zone as being consistent with the strategic plan adopted pursuant to Section 25324. The application shall be in the form prescribed by the commission and shall be supported by any information that the commission may require.

25332. The designation of a transmission corridor zone is subject to the California Environmental Quality Act (Division 13 (commencing with Section ~~21000~~ 21000)). The commission shall be the lead agency, as provided in Section 21165, for all transmission corridor zones proposed for designation pursuant to this chapter.

25333.

(a) In developing a strategic plan pursuant to Section 25324 or considering an application for designation pursuant to this chapter, the commission shall confer with cities and counties, federal agencies, and California Native American tribal governments to identify appropriate areas within their jurisdictions that may be suitable for a transmission corridor zone. The commission shall, to the extent feasible, coordinate efforts to identify long-term transmission needs of the state with the land use plans of cities, counties, federal agencies, and California Native American tribal governments.

(b) The commission shall not designate a transmission corridor zone within the jurisdiction of a California Native American tribal government without the approval of the California Native American tribal government.

25334.

(a) Upon receipt of an application or upon its own motion for designation of a transmission corridor zone, the commission shall arrange for the publication of a summary of the application in a newspaper of general circulation in each county in which the proposed transmission corridor zone would be located. The commission shall transmit a copy of the application for designation to all cities, counties, and state and federal agencies having an interest in the proposed transmission corridor zone.

(b) As soon as practicable after the receipt of an application or upon its own motion for designation of a transportation corridor zone, the commission shall notify cities, counties, state and federal agencies, and California Native American tribal governments in whose jurisdictions the proposed transmission corridor zone would be located regarding the proposed transmission corridor zone and the objectives of the most recent strategic plan for the state's electric transmission grid. The commission's notice shall solicit information

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from, and the commission shall confer with, all interested cities, counties, state and federal agencies, and California Native American tribal governments regarding their land use plans, existing land uses, and other factors in which they have expertise or interest with respect to the proposed transmission corridor zone. The commission shall provide any interested city, county, state or federal agency, or California Native American tribal government ample opportunity to participate in the commission's review of a proposed transmission corridor zone.

(c) The commission shall request affected cities, counties, state and federal agencies, the Independent System Operator, interested California Native American tribal governments, and members of the public to provide comments on the suitability of the proposed transmission corridor zone with respect to environmental, public health and safety, land use, economic, and transmission-system impacts or other factors on which they may have expertise.

(d) The commission shall require a person who files an application for the designation of a transmission corridor zone to ~~pay the reasonable costs incurred by the commission in making this designation.~~ pay a fee sufficient to reimburse the commission for all costs associated with reviewing the application. If the commission initiates the designation of a transmission corridor zone on its own motion, the commission shall fix the surcharge imposed pursuant to subdivision (b) of Section 40016 of the Revenue and Taxation Code, at a level sufficient to cover the commission's added costs.

(e) Upon receiving the commission's request for review of a proposed transmission corridor zone, a city or county may request a fee pursuant to Section 25538 to cover for the actual and added costs of this review and the commission shall pay this amount to the city or county.

25335.

(a) Within 45 days of receipt of the application or motion for designation, the commission shall commence public informational hearings in the county or counties in which the proposed transmission corridor zone would be located.

(b) The purpose of the hearings shall be to do all of the following:

- (1) Provide information about the proposed transmission corridor zone so that the public and interested agencies have a clear understanding of what is being proposed.
- (2) Explain the relationship of the proposed transmission corridor zone to the commission's strategic plan for the state's electric transmission grid, as set forth in the most recent integrated energy policy report adopted pursuant to Chapter 4 (commencing with Section 5300).
- (3) Receive initial comments about the proposed transmission corridor zone from the public and interested agencies.
- (4) Solicit information on reasonable alternatives to the proposed transmission corridor zone.

25336.

(a) Within 155 days of the final informational hearing, the commission shall conduct a prehearing conference to determine the issues to be considered in hearings pursuant to this section, to identify the dates for the hearings, and to set forth filing dates for public comments and testimony from the parties and interested agencies. Within 15 days of the prehearing conference, the commission shall issue a hearing order setting forth the issues to be heard, the dates of the hearings, and the filing dates for comments and testimony.

(b) The commission shall conduct hearings pursuant to the hearing order. The purpose of the hearings shall be to receive information upon which the commission can make findings and conclusions pursuant to Section 25337.

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25337.

After the conclusion of hearings conducted pursuant to Section 5336, and no later than 180 days after the date of certification of the environmental impact report prepared pursuant to Section 25332, the commission shall issue a proposed decision that contains its findings and conclusions regarding all of the following matters:

- (a) Conformity of the proposed transmission corridor zone with the strategic plan adopted pursuant to Section 25324.
- (b) Suitability of the proposed transmission corridor zone with respect to environmental, public health and safety, land use, economic, and transmission-system impacts.
- (c) Any mitigation measures and alternatives as may be needed to protect environmental quality, public health and safety, the state's electric transmission grid, or any other relevant matter.
- (d) Any other factors that the commission considers relevant.

25338. As soon as practicable after the commission designates a transmission corridor zone, it shall send a copy of its decision, including a description of the transmission corridor zone, to each affected city, county, state agency, and federal agency.

25339.

After the commission designates a transmission corridor zone, it shall identify that transmission corridor zone in its subsequent strategic plans adopted pursuant to Section 25324. The commission shall regularly review and revise its designated transmission corridor zones as necessary, but not less than once every six years. In revising designations of transportation corridor zones, the commission shall follow the procedures of this chapter. If, upon review, the commission finds that a transmission corridor zone is no longer needed, the commission shall revise or repeal the designation and, as soon as practicable, notify the affected cities, counties, and state and federal agencies.

25340.

Not more than 12 months after receiving notice from the commission regarding the designation or revision of a transmission corridor zone within its jurisdiction, each city or county shall amend its general plan pursuant to Article 6 (commencing with Section 65350) of Chapter 3 of Division 1 of Title 7 of the Government Code, to be consistent with the commission's designation or revision.

25341.

(a) Within a designated transmission corridor zone, within 10 days of accepting as complete an application pursuant to Section 65943 of the Government Code for a development project that a city or county determines would threaten the potential to construct a high-voltage electric transmission line, the city or county shall notify the commission of the proposed development project. The notice shall include a copy of the application, and set a deadline that is not less than 60 days from the date of the notice for the commission to provide written comments to the city or county regarding the proposed development project.

(b) If the commission finds that the proposed development project would threaten the potential to construct a high-voltage electric transmission line within the designated transmission corridor zone, the commission shall provide written comments to the city or county. The commission may recommend revisions to, redesign of, or mitigation measures for the proposed development project that would eliminate or reduce the threat.

(c) The city or county shall consider the commission's comments, if any, prior to acting on the proposed development project. If the commission objects to the proposed development project, the city or county shall provide a written response that shall address in detail why it did not accept the commission's comments and recommendations.

SEC. 3.

F-1.53

The Legislature finds and declares that Sections 65104 and 66014 of the Government Code provide local agencies with authority to levy fees sufficient to pay for the program or level of service mandated by this act.

SEC. 4.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

F-154

cc: Council
Culbreth-Griff
Berkley
Dapkus

PAT
JGK
KFB



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URGENT — CALL TO ACTION

Page 1 of 2

DATE: June 9, 2005

TO: Mayors and Council Member, City Managers, Planning and Community Development Directors

FROM: League Executive Director Chris McKenzie
League Legislative Representative Yvonne Hunter

RE: SB 1059 (Escutia). Electric Transmission Corridors. Land Use Preemption -- **OPPOSE UNLESS AMENDED** – Contact the Author and Your Legislators Today

Action Requested: All cities are requested to contact the author of SB 1059 (Senator Martha Escutia – Whittier) and their own Assembly Members to urge them to oppose SB 1059 unless it is amended to respond to the issues raised by the League and others. The bill is currently pending in the Assembly Utilities and Commerce Committee (no hearing date at this time). It may also be assigned to the Assembly Local Government Committee. (A sample letter is attached, and available on the League's online Advocacy Center at www.cacities.org/advocacycenter.)

What the bill does: SB 1059 would authorize the California Energy Commission (CEC) to impose upon local governments transmission corridor zones (TCZs) in a way that would tie up the future uses of the land without adequate property owner compensation, require local governments to amend their general plans to be consistent with the Commission's designation of TCZs, and subject local governments to regulatory takings lawsuits.

The need for statewide planning: While the League appreciates the need to have statewide assessment and planning for potential future transmission requirements, SB 1059 falls short of that goal. Instead it authorizes the CEC to designate corridors "on its own motion" or "upon application of a person who plans to construct"... a corridor. The practical effect is a piecemeal, not comprehensive, approach to corridor planning, and would result in requiring cities and counties to amend the general plans whenever a corridor is designated or de-designated.

What's wrong with the bill: SB 1059 would result in local land use preemption, costly and mandatory general plan revisions for local governments, uncertainty and confusion regarding what is a compatible use or permitted project within a TCZ (thus impacting both local governments and the development community), and potential regulatory takings lawsuits filed against local governments. More specifically,

F-1.55

SB 1059 Senate Bill - AMENDED

BILL NUMBER: SB 1059 AMENDED
BILL TEXT

AMENDED IN SENATE APRIL 26, 2005
AMENDED IN SENATE APRIL 18, 2005
AMENDED IN SENATE APRIL 13, 2005
AMENDED IN SENATE APRIL 4, 2005

INTRODUCED BY Senators Escutia and Morrow

FEBRUARY 22, 2005

An act to add Chapter 4.3 (commencing with Section 25330) to Division 15 of the Public Resources Code, relating to electricity transmission.

LEGISLATIVE COUNSEL'S DIGEST

SB 1059, as amended, Escutia. Electric transmission corridors.

(1) Existing law requires the State Energy Resources Conservation and Development Commission to adopt a strategic plan for the state's electric transmission grid using existing resources. Existing law requires that the plan identify and recommend actions required to implement investments needed to ensure reliability, relieve congestion, and to meet future growth in load and generation, including, but not limited to, renewable resources, energy efficiency, and other demand reduction measures.

This bill would authorize the commission to designate a transmission corridor zone on its own motion or by application of a person who plans to construct a high-voltage electric transmission line within the state. The bill would provide that the designation of a transmission corridor shall serve to identify a feasible corridor in which can be built a future transmission line that is consistent with the state's needs and objectives as set forth in the strategic plan adopted by the commission. The bill would prescribe procedures for the designation of a transmission corridor, including publication of the request for designation and request for comments, coordination with federal agencies and California Native American governments, informational hearings, and requirements for a proposed decision.

~~The bill would require each city and county in which a designated corridor is located to take all actions necessary to integrate the designated transmission corridor zone in their respective general and specific plans, thereby creating a state-mandated local program.~~

The bill would require the commission, after designating a transmission corridor zone, to identify that transmission corridor zone in its subsequent strategic plans and to regularly review and revise its designated transmission corridor zones as necessary, but not less than once every 6 years.

~~The bill would require a city or county, within 12 months after receiving a notice from the commission of a transmission corridor zone, to amend its general plan consistent with the commission's designation or revision.~~

The bill would require a city or county, within 10 days of accepting as complete an application for a development project within a designated transmission corridor zone that the city or county determines would threaten the potential to construct a high-voltage electric transmission line, to notify the commission of the proposed development project. The bill would require the commission, upon making a specified finding regarding the proposed development

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project, to provide written comments to the city or county and would require the city or county to consider the commission's comments.

The bill would impose a state-mandated local program by imposing new duties upon local agencies.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

The Legislature finds and declares all of the following:

(a) California currently lacks an integrated, statewide approach to electric transmission planning and permitting that addresses the state's critical energy and environmental policy goals and allows electric transmission projects to move seamlessly from the planning phase into the permitting phase for timely approval and construction of needed electric transmission lines.

(b) Planning for and establishing a high-voltage electric transmission system to accommodate the development of renewable resources within the state, facilitate bulk power transactions, ensure access to out-of-state regions that have surplus power available, and reliably and efficiently supply existing and projected load growth is vital to the future economic and social well-being of California.

(c) To promote the efficient use of the existing transmission system, the state should do both of the following:

(1) Encourage the use of existing rights-of-way, the expansion of existing rights-of-way, and the creation of new rights-of-way in that order.

(2) Promote the efficient use of new rights-of-way, where needed, to improve system efficiency and the environmental performance of the transmission system.

(d) The construction of new high-voltage electric transmission lines within new or existing corridors has become increasingly difficult and may impose financial hardships and adverse environmental impacts on the state and its residents. It is in the interest of the state, therefore, through the electricity transmission planning process, to accomplish all of the following:

(1) Identify the long-term needs for electric transmission corridor zones within the state.

(2) Work with stakeholders, appropriate federal, state, and local agencies, and the public to study transmission corridor zone alternatives and designate appropriate corridor zones for future use to ensure reliable and efficient delivery of electricity for California's residents.

(3) Integrate transmission corridor zone planning at the state level with local planning so that designated corridor zones are reflected in local general and specific plans.

(e) Orderly planning and development of needed high-voltage electric transmission lines through the designation of transmission corridor zones is an issue of statewide concern.

SEC. 2 Chapter 4.3 (commencing with Section 25330) is added to Division 15 of the Public Resources Code, to read:

E-1.57
http://ct2k2.capitoltrack.com/Bills/sen/sb_1051-1100/sb_1059_bill_20050426_amended_sen.html

CHAPTER 4.3. Designation of Transmission Corridors

25330.

For purposes of this chapter, the following terms have the following meanings:

(a) "Feasible" has the same meaning as in Section 21061.1.

(b) "High-voltage electric transmission line" means an electric transmission line with an operating capacity of at least 200 kilovolts, or that is under the operational control of the California Independent System Operator.

(c) "Transmission corridor zone" means the geographic area necessary to accommodate the construction and operation of one or more high-voltage electric transmission lines, consistent with existing land uses and land uses identified in local general or specific plans, to the extent feasible.

25331.

(a) The commission may designate a transmission corridor zone on its own motion or by application of a person who plans to construct a high-voltage electric transmission line within the state. The designation of a transmission corridor zone shall serve to identify a feasible corridor in which can be built a future high-voltage electric transmission line that is consistent with the state's needs and objectives as set forth in the strategic plan adopted pursuant to Section 25324.

(b) A person planning to construct a high-voltage electric transmission line may submit to the commission an application to designate a proposed transmission corridor zone as being consistent with the strategic plan adopted pursuant to Section 25324. The application shall be in the form prescribed by the commission and shall be supported by any information that the commission may require.

~~—(c)~~

25332. The designation of a transmission corridor zone is subject ~~to Division 13 (commencing with Section 21000) and the~~ to the California Environmental Quality Act ~~Division 13 (commencing with Section 21000)~~. The commission shall be the lead agency, as provided in Section 21165, for all transmission corridor zones proposed for designation pursuant to this chapter.

~~—25332—~~

~~(a) A transmission corridor zone designated as being consistent with the strategic plan adopted pursuant to Section 25324 shall be so identified in subsequent strategic plans and its designation reviewed at least every six years in the planning process for the strategic plan.~~

~~(b) If, upon review, the commission finds a transmission corridor zone is no longer needed, the designation of that transmission corridor zone shall expire and the commission shall notify affected cities, counties, and state and federal agencies.~~

25333.

(a) In developing a strategic plan pursuant to Section 25324 or considering an application for designation pursuant to this chapter, the commission shall confer ~~as needed, depending on the long-term needs for and possible location of a transmission corridor zone, with cities and counties, federal agencies~~ with cities and counties, federal agencies, and California Native American tribal governments to identify appropriate areas within their jurisdictions that may be suitable for a transmission corridor zone. The commission shall, to the extent feasible, coordinate efforts to identify long-term transmission needs of the state with the land use plans of ~~cities and counties, federal agencies~~ cities, counties, federal agencies, and California Native American tribal governments.

(b) The commission shall not designate a transmission corridor

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one within the jurisdiction of a California Native American tribal government without the approval of the California Native American tribal government.

25334.

(a) Upon receipt of an application or upon its own motion for designation of a transmission corridor zone, the commission shall arrange for the publication of a summary of the application in a newspaper of general circulation in each county in which the proposed transmission corridor zone would be located. The commission shall transmit a copy of the application for designation to all cities, counties, and state and federal agencies having an interest in the proposed transmission corridor zone.

(b) As soon as practicable after the receipt of an application or upon its own motion for designation of a transportation corridor zone, the commission shall notify cities, counties, state and federal agencies, and California Native American tribal governments in whose jurisdictions the proposed transmission corridor zone would be located regarding the proposed transmission corridor zone and the objectives of the most recent strategic plan for the state's electric transmission grid. The commission's notice shall solicit information from, and the commission shall confer with, all interested cities, counties, state and federal agencies, and California Native American tribal governments regarding their land use plans, existing land uses, and other factors in which they have expertise or interest with respect to the proposed transmission corridor zone. The commission shall provide any interested city, county, state or federal agency, or California Native American tribal government ample opportunity to participate in the commission's review of a proposed transmission corridor zone.

~~(b)~~
(c) The commission shall request affected cities, counties, state and federal agencies, the Independent System Operator, interested California Native American tribal governments, and members of the public to provide comments on the suitability of the proposed transmission corridor zone with respect to environmental, public health and safety, land use, economic, and transmission-system impacts or other factors on which they may have expertise. ~~Upon~~

(d) The commission shall require a person who files an application for the designation of a transmission corridor zone to pay the reasonable costs incurred by the commission in making this designation.

(e) Upon receiving the commission's request ~~for~~ review of a proposed transmission corridor zone, a city or county may request a fee pursuant to Section 25538 to cover for the actual and added costs of this review and the commission shall pay this amount to the city or county

25335.

(a) Within 45 days of receipt of the application or motion for designation, the commission shall commence public informational hearings in the county or counties in which the proposed transmission corridor zone would be located.

~~(b) The purpose of the hearings shall be to do all of the following:~~

- (1) Provide information about the proposed transmission corridor zone so that the public and interested agencies have a clear understanding of what is being proposed.
- (2) Explain the relationship of the proposed transmission corridor zone to the commission's strategic plan for the state's electric transmission grid, as set forth in the most recent integrated energy policy report adopted pursuant to Chapter 4 (commencing with Section 25300).
- (3) Receive initial comments about the proposed transmission

corridor zone from the public and interested agencies.

(4) Solicit information on reasonable alternatives to the proposed transmission corridor zone.

25336.

(a) Within 155 days of the final informational hearing, the commission shall conduct a prehearing conference to determine the issues to be considered in hearings pursuant to this section, to identify the dates for the hearings, and to set forth filing dates for public comments and testimony from the parties and interested agencies. Within 15 days of the prehearing conference, the commission shall issue a hearing order setting forth the issues to be heard, the dates of the hearings, and the filing dates for comments and testimony.

(b) The commission shall conduct hearings pursuant to the hearing order. The purpose of the hearings shall be to receive information upon which the commission can make findings and conclusions pursuant to Section 25337.

25337.

After the conclusion of hearings conducted pursuant to Section 25336, and no later than ~~90 days after completion~~ 180 days after the date of certification of the environmental impact report prepared pursuant to Section ~~25331~~ 25332, the commission shall issue a proposed decision that contains its findings and conclusions regarding all of the following matters:

(a) Conformity of the proposed transmission corridor zone with the strategic plan adopted pursuant to Section 25324.

(b) Suitability of the proposed transmission corridor zone with respect to environmental, public health and safety, land use, economic, and transmission-system impacts.

(c) Any mitigation measures and alternatives as may be needed to protect environmental quality, public health and safety, the state's electric transmission grid, or any other relevant matter.

(d) Any other factors that the commission considers relevant.

~~25338.~~

~~(a) - As soon as~~

~~practicable after the receipt of an application for designation pursuant to Section 25331, the commission shall inform cities, counties, state and federal agencies, and California Native American tribal governments in whose jurisdictions the proposed transmission corridor zone would be located about the proposed transmission corridor zone and the objectives of the most recent strategic plan for the state's electric transmission grid. The commission shall solicit information from and confer with all interested cities, counties, state and federal agencies, and California Native American tribal governments about their land use plans, existing land uses, and other factors in which they have expertise or interest with respect to a proposed transmission corridor zone. Interested cities, counties, state and federal agencies, and California Native American tribal governments shall be afforded ample opportunity to participate in the commission's review of a proposed transmission corridor zone.~~

~~(b) - Once~~

~~25338. As soon as practicable after the commission designates a transmission corridor zone pursuant to Section 25332, it shall send a copy of its decision, including a description of the transmission corridor zone, to each affected city, county, state agency, and federal agency. Each city and county in which the designated transmission corridor zone is located may otherwise permit development within the designated transmission corridor with commission approval in accordance with local agency policy, giving full consideration to appropriate restrictions within, and adjacent to, the designated transmission corridor zone. Each city and county in which the designated~~

F-1.60

~~transmission corridor zone is located shall integrate the designated transmission corridor zone into their respective general and specific plans during the next regular plan revision, but not later than five years following receipt of the commission's decision.~~

25339.

After the commission designates a transmission corridor zone, it shall identify that transmission corridor zone in its subsequent strategic plans adopted pursuant to Section 25324. The commission shall regularly review and revise its designated transmission corridor zones as necessary, but not less than once every six years. In revising designations of transportation corridor zones, the commission shall follow the procedures of this chapter. If, upon review, the commission finds that a transmission corridor zone is no longer needed, the commission shall revise or repeal the designation and, as soon as practicable, notify the affected cities, counties, and state and federal agencies.

25340.

Not more than 12 months after receiving notice from the commission regarding the designation or revision of a transmission corridor zone within its jurisdiction, each city or county shall amend its general plan pursuant to Article 6 (commencing with Section 65350) of Chapter 3 of Division 1 of Title 7 of the Government Code, to be consistent with the commission's designation or revision.

25341.

(a) Within a designated transmission corridor zone, within 10 days of accepting as complete an application pursuant to Section 65943 of the Government Code for a development project that a city or county determines would threaten the potential to construct a high-voltage electric transmission line, the city or county shall notify the commission of the proposed development project. The notice shall include a copy of the application, and set a deadline that is not less than 60 days from the date of the notice for the commission to provide written comments to the city or county regarding the proposed development project.

(b) If the commission finds that the proposed development project would threaten the potential to construct a high-voltage electric transmission line within the designated transmission corridor zone, the commission shall provide written comments to the city or county. The commission may recommend revisions to, redesign of, or mitigation measures for the proposed development project that would eliminate or reduce the threat.

(c) The city or county shall consider the commission's comments, if any, prior to acting on the proposed development project. If the commission objects to the proposed development project, the city or county shall provide a written response that shall address in detail why it did not accept the commission's comments and recommendations.

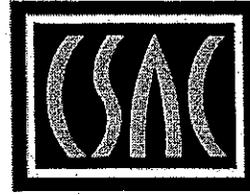
SEC. 3.

The Legislature finds and declares that Sections 65104 and 66014 of the Government Code provide local agencies with authority to levy fees sufficient to pay for the program or level of service mandated by this act.

SEC. 4.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

F-1.61



May 31, 2005

To: Members, California State Senate

From: Yvonne Hunter, League of California Cities
Karen Keene, California State Association of Counties
Kathy Mannion, Regional Council of Rural Counties
Karen Mills, California Farm Bureau Federation

Re: SB 1059 (Escutia) Transmission Corridors – **Oppose Unless Amended**

The League of California Cities (League), the California State Association of Counties (CSAC), the California Farm Bureau Federation (Farm Bureau) and the Regional Council of Rural Counties (RCRC) strongly oppose SB 1059 by Senator Escutia, and urge your NO vote on the Senate Floor. SB 1059 blatantly preempts the local land use decision-making process, subjects local governments to potential takings lawsuits, diminishes private property rights, and does not provide for adequate property owner notification nor property owner compensation.

- **SB 1059 would preempt local land use authority by requiring local governments to amend their general plans to be consistent with the California Energy Commission's (CEC) designation of a Transmission Corridor Zone (TCZ).**

General plan amendments are costly, ranging from \$100,000 to \$500,000 depending upon the size of the jurisdiction and complexity of the amendments. Local governments would be required to amend their general plan when a TCZ is designated and again if the CEC subsequently decides that the TCZ is not needed. Cities and counties have no viable way to pay for these revisions, notwithstanding Section 25334 (e) of the bill. This requirement would force local governments to use precious resources that could otherwise be used for other local planning activities.

- **SB 1059 would make local governments vulnerable to regulatory takings lawsuits.**

State designation of a TCZ will raise the question of what are or are not compatible land uses. Our organizations are greatly concerned about the potential of regulatory takings lawsuits filed against local governments by disgruntled landowners whose projects are denied because the city or county determined that the project is within the TCZ and

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would threaten the potential to construct a high-voltage electric transmission line sometime in the future.

- **SB 1059 is silent on the width of the proposed TCZs.**

In a 1989 CEC staff report titled *Electric Power Line Permitting in California*, a transmission line corridor is described as a strip of land varying from **two to five miles in width!** A recent inquiry to the CEC as to their current thinking in regards to the width of a TCZ revealed that there is not an "official" answer to the question at this time. In a recent meeting called by the author's office, utility land planning experts mentioned "three miles" several times during the course of the discussion.

- **SB 1059 does not provide for adequate property owner notification.**

Our organizations support notification by the state to the property owners who would be impacted by the designation of a TCZ. Publication of a summary of an application in a newspaper of general circulation and informational hearings in each county in which the proposed transmission corridor zone would be located is not adequate given the implications designation will have on the uses of property within the TCZ.

- **SB 1059 would tie up the future uses of land within the TCZ for an undetermined length of time without landowner compensation. Landowners within a TCZ should receive just and reasonable consideration for lands "held for future use".**

Once a TCZ is designated by the CEC the landowner's options as to the use of their property is limited until such time as a decision is made to actually site a transmission line or the CEC determines that the TCZ is no longer needed and repeals the designation. Long-term statewide planning for needed infrastructure improvements to benefit all the state's residents should not place this uncompensated burden on individual landowners who are within a TCZ. If a TCZ is designated the landowners should be compensated in the form of an option to purchase, the purchase of the land, or the acquisition of an easement.

In conclusion, while we fully support statewide assessment and planning for future transmission needs, we do not agree that the CEC should "designate" TCZs as proposed in SB 1059. For the reasons stated above, the League, CSAC, the Farm Bureau and RCRC strongly oppose SB 1059.

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May 2, 2005

TO: Members, Senate Appropriations Committee

RE: SB 1059 (Escutia). Transmission Corridor Zones. Local Land Use Preemption.

NOTICE OF OPPOSITION UNLESS AMENDED

What the bill does: As currently drafted, SB 1059 would authorize the state to impose upon local governments transmission corridor zones (TCZs) in a way that would tie up the future uses of the land without adequate property owner compensation and require local governments to amend their general plans to be consistent with the Commission's designation of TCZs. The measure does not include adequate stakeholder input in developing the TCZs and adequate property owner notification. While the recent amendments are a step in the right direction, our three organizations must respectfully continue to oppose SB 1059 unless it is amended.

The need for statewide planning: The League, CSAC and RCRC appreciate the need to have statewide assessment and planning for potential future transmission requirements, especially in areas of the state where population and load growth may occur. However, we believe the bill falls short in providing adequate up-front collaborative planning for the amount, location and timing of growth.

Unfortunately, SB 1059 fails to actually provide for comprehensive statewide transmission corridor planning. Instead it authorizes the CEC to designate corridors "on its own motion" or "upon application of a person who plans to construct"... a corridor. The practical effect is a piecemeal, not comprehensive, approach to corridor planning, and would result in requiring cities and counties to amend the general plans whenever a corridor is designated or de-designated.

What's wrong with the bill: In an attempt to promote statewide transmission line planning, a worthy goal, SB 1059 would result in local land use preemption, costly and mandatory general plan revisions for local governments, uncertainty and confusion regarding what is a compatible use or permitted project within a TCZ (thus impacting both local governments and the development community), and potential regulatory takings lawsuits filed against local governments. More specifically,

- SB 1059 would require cities and counties to amend their general and specific plans to be consistent with the state determined TCZs. And, if the CEC

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SB 1059 (Escutia) Notice of Opposition Unless Amended

Page 2 of 2

May 2, 2005

subsequently decides that the TCZ is not needed and de-designates it, the local agency would, as a matter of planning practice, have to amend its general plan again to remove the TCZs. General plan amendments are costly, ranging from \$100,000 to \$500,000, depending upon the size of the jurisdiction and complexity of the amendments.

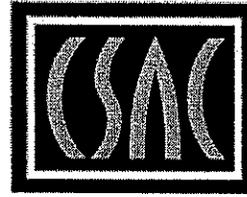
- The bill would require a costly general plan update for cities and counties within the TCZ, with no viable way to pay for them, notwithstanding Section 3 of the bill. Compounding the problem, if the CEC de-designates a TCZ, the local agency would be forced to re-amend its general plan with no reimbursement from the state. This requirement would force the local agency to use precious resources that could otherwise be used for other local planning priorities.
- The bill is silent on how wide the TCZ would be. Would it be 1000 feet, one mile or five miles wide? In a 1989 report, the CEC describes a transmission line corridor as a strip of land varying from two to five miles in width. ("Electric Power Line Permitting in California"). We have asked the CEC if this definition reflects their current thinking. To date, we have not received a definitive response.
- Regardless of the width, the bill would tie up large swaths of land for five, ten, twenty or more years until the transmission line planning process moves to the Public Utilities Commission phase. In that time, property owners would have no certainty about whether they could develop their property or what the compatible uses could be. And, if a TCZ is de-designated, who will reimburse the property owner and local community for lost development opportunities?
- The proposed process raises serious regulatory takings issues, which could put local governments at risk for takings lawsuits. Even if the suits failed in court, the local government would still be faced with the costs of defending them.

The League, CSAC and RCRC agree with the goal of SB 1059, which is to undertake better long range planning for transmission line needs. However, we believe the process proposed in the bill is seriously flawed, preempts local land use authority, does not include sufficient property owner input and notification, and will impose significant costs on local governments. We have proposed an alternative process to the author and sponsors, but to date, have not reached consensus.

For these reasons, the League, CSAC and RCRC oppose SB 1059 unless it is amended.

Cc: Senator Escutia
Consultant, Senate Appropriations Committee

F-1.65



May 31, 2005

To: Members, California State Senate

From: Yvonne Hunter, League of California Cities
Karen Keene, California State Association of Counties
Kathy Mannion, Regional Council of Rural Counties
Karen Mills, California Farm Bureau Federation

Re: SB 1059 (Escutia) Transmission Corridors – **Oppose Unless Amended**

The League of California Cities (League), the California State Association of Counties (CSAC), the California Farm Bureau Federation (Farm Bureau) and the Regional Council of Rural Counties (RCRC) strongly oppose SB 1059 by Senator Escutia, and urge your **NO** vote on the Senate Floor. SB 1059 blatantly preempts the local land use decision-making process, subjects local governments to potential takings lawsuits, diminishes private property rights, and does not provide for adequate property owner notification nor property owner compensation.

- **SB 1059 would preempt local land use authority by requiring local governments to amend their general plans to be consistent with the California Energy Commission's (CEC) designation of a Transmission Corridor Zone (TCZ).**

General plan amendments are costly, ranging from \$100,000 to \$500,000 depending upon the size of the jurisdiction and complexity of the amendments. Local governments would be required to amend their general plan when a TCZ is designated and again if the CEC subsequently decides that the TCZ is not needed. Cities and counties have no viable way to pay for these revisions, notwithstanding Section 25334 (e) of the bill. This requirement would force local governments to use precious resources that could otherwise be used for other local planning activities.

- **SB 1059 would make local governments vulnerable to regulatory takings lawsuits.**

State designation of a TCZ will raise the question of what are or are not compatible land uses. Our organizations are greatly concerned about the potential of regulatory takings lawsuits filed against local governments by disgruntled landowners whose projects are denied because the city or county determined that the project is within the TCZ and

F-1.66

would threaten the potential to construct a high-voltage electric transmission line sometime in the future.

- **SB 1059 is silent on the width of the proposed TCZs.**

In a 1989 CEC staff report titled *Electric Power Line Permitting in California*, a transmission line corridor is described as a strip of land varying from **two to five miles in width!** A recent inquiry to the CEC as to their current thinking in regards to the width of a TCZ revealed that there is not an "official" answer to the question at this time. In a recent meeting called by the author's office, utility land planning experts mentioned "three miles" several times during the course of the discussion.

- **SB 1059 does not provide for adequate property owner notification.**

Our organizations support notification by the state to the property owners who would be impacted by the designation of a TCZ. Publication of a summary of an application in a newspaper of general circulation and informational hearings in each county in which the proposed transmission corridor zone would be located is not adequate given the implications designation will have on the uses of property within the TCZ.

- **SB 1059 would tie up the future uses of land within the TCZ for an undetermined length of time without landowner compensation. Landowners within a TCZ should receive just and reasonable consideration for lands "held for future use".**

Once a TCZ is designated by the CEC the landowner's options as to the use of their property is limited until such time as a decision is made to actually site a transmission line or the CEC determines that the TCZ is no longer needed and repeals the designation. Long-term statewide planning for needed infrastructure improvements to benefit all the state's residents should not place this uncompensated burden on individual landowners who are within a TCZ. If a TCZ is designated the landowners should be compensated in the form of an option to purchase, the purchase of the land, or the acquisition of an easement.

In conclusion, while we fully support statewide assessment and planning for future transmission needs, we do not agree that the CEC should "designate" TCZs as proposed in SB 1059. For the reasons stated above, the League, CSAC, the Farm Bureau and RCRC strongly oppose SB 1059.

F-1.67